

**ACTS**

**OF THE**

**LEGISLATURE**

**OF**

**WEST VIRGINIA**

---

**TWENTY-NINTH REGULAR SESSION.**

**1909.**

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**NEWS-MAIL COMPANY**  
**M. T. ROACH, Receiver**  
**PUBLIC PRINTERS**  
**Charleston, 1909.**





NOTE BY THE CLERK OF THE HOUSE OF DELEGATES.

The following bills, viz: House bill No. 232, being chapter 90, and House bill No. 62, being chapter 91, were enacted into laws by the legislature, and were vetoed by the governor.

The supreme court handed down a decision relative to other measures that occupied an exact position with these acts holding the vetoes thereof ineffective; hence the incorporation of the above mentioned measures in the acts of the legislature.

Senate Concurrent Resolution No. 3, passed by the legislature, also vetoed by the governor, is printed in the acts of the legislature, as it, too, occupies a like position as the bills.

C. L. TOPPING, *Clerk of the House.*

ERRATA.

On page 309, section 15, line 1 "pay" should read "lay."

On page 388, section 35, 2nd paragraph, lines 1 and 2 "devise" should read "deviseo"; also 3rd paragraph, line 1 "devise" should read "devisee."



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# ACTS OF 1909.

(House Bill No. 330.)

## CHAPTER 1.

AN ACT to amend and re-enact chapter three of the acts of the legislature of West Virginia, session one thousand nine hundred and five, granting a charter to the city of Bluefield, as amended by chapter two of the acts of the legislature of West Virginia, session one thousand nine hundred and seven.

(Passed February 26, 1909. In effect from passage. Approved by the Governor, March 3, 1909.)

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*Be it enacted by the Legislature of West Virginia:*

That chapter three of the acts of the legislature of West Virginia, session of one thousand nine hundred and five, granting a charter to the city of Bluefield, as amended by chapter two of the acts of the legislature of West Virginia, session of one thousand nine hundred and seven, be, and the same is hereby amended and re-enacted to read as follows:

## ARTICLE I.

### *The City of Bluefield.*

Sec. 1. The inhabitants of all that part of the county of Mercer



included and centered within the limits hereafter prescribed in article II is hereby made a city corporate and body politic by the name of "The City of Bluefield," and as such shall have perpetual succession and a common seal, and by that name may sue and be sued, implead and be impleaded, and may purchase, hold, lease or sell real estate and personal property necessary to the discharge of its corporate duties, or needful or convenient for the good order, government and welfare of said corporation.

## ARTICLE II.

### *Corporate Limits.*

Sec. 2. The corporate territorial limits of the city of Bluefield shall comprise all that district of country situate in the county of Mercer and state of West Virginia, to-wit: Beginning at the intersection of the state line between Virginia and West Virginia with the center of the county road between Bluefield, West Virginia, and Graham, Virginia, known as Graham avenue; thence with the state line north 49 degrees and 34 minutes west 3058 feet to a stone corner 740 feet north of the Stony Ridge; thence north 66 degrees and 35 minutes east 20,727 feet to a stone corner on the north side of Stony Ridge; thence south 23 degrees and 25 minutes east, crossing Stony Ridge at 454 feet 3636 feet to a stone corner on top of the Valley Ridge; thence south 25 degrees and 53 minutes west 6614 feet to a stone corner on the south side of the Wilson Valley; thence south 66 degrees and 25 minutes west 2446 feet to the center of the county road leading from Bland county to the city of Bluefield; thence with the center of said road in a southerly direction 2263 feet to its intersection with the Cumberland Gap and Price's Turnpike; thence with the center of said turnpike in a westerly direction 6191 feet to a point opposite the division line between the lands of Alexander Bailey and James R. Calfee, and also opposite the entrance to what is known as the Beaver Pond Road, leading to the city of Bluefield; thence north 70 degrees west 7271 feet to a stone corner on the first ridge south of the Valley Ridge on the state line between Virginia and West Virginia; thence with the said state line north 49 degrees and 34 minutes west 2606 feet to the point of beginning.

## ARTICLE III.

### *Boundaries of Wards.*

Sec. 3. The said city shall be divided into nine wards, the boundaries of which shall be as follows:

Ward No. 1. On the north by Norfolk and Western Railway Company's right of way; on the east by Thomas street; on the south by the summit of Valley Ridge, running with a line of the Bluefield Water Works and Improvement Company's lands, and on the west by the line dividing the states of Virginia and West Virginia.

Ward No. 2. On the north by the Norfolk and Western Railway Company's right of way; on the east by Mercer street; on the south by the summit of Valley Ridge on the line mentioned above; on the west by Thomas street.

Ward No. 3. On the north by the Norfolk and Western Railway Company's right of way; on the east by Higginbotham avenue; on the south by summit of Valley Ridge on the line mentioned above, and on the west by Mercer street.

Ward No. 4. On the north by the Norfolk and Western Railway Company's right of way; on the east by the center line of Monroe street to its intersection with the south line of the alley in the rear of section No. 26; thence a straight line south 23 degrees and 25 minutes east to the summit of Valley Ridge; on the south by the summit of Valley Ridge and the lines of the Bluefield Water Works and Improvement Company, and on the west by Higginbotham avenue.

Ward No. 5. On the north by the south lines of wards Nos. 1, 2 and 3; on the east by Bland street; on the south and west by the corporate limits of the said city of Bluefield.

Ward No. 6. On the south by the summit of Valley Ridge to a point south 23 degrees and 25 minutes east from the intersection of the center line of Monroe street with the south line of the alley in the rear of section 26, said line being a part of the northern boundary line of ward No. 9; on the west by ward No. 4, and crossing of the Norfolk & Western Railway to Henry street; thence along Henry, Sussex and Warren streets to the head of Warren street; thence a straight line to the northern boundary of said city; and on the north and east by the corporate limits of said city.

Ward No. 7. On the south by the Norfolk and Western Railway Company's right of way; on the east by the lines of ward No. 6; on the north by the corporate line to a point on a line of Beasley street; on the west by a straight line running from the said corporate line to the head of Beasley street, thence with Beasley street to Marshall street, thence with Marshall street to Reese street.

thence with Reese street to the Norfolk and Western Railway Company's right of way.

Ward No. 8. On the north and west by the corporate lines of said city; on the south by the Norfolk and Western Railway Company's right of way; on the east by the lines of ward No. 7.

Ward No. 9. On the north by the south lines of wards Nos. 4 and 6; on the west by Bland street; and on the south and east by the corporate lines of said city of Bluefield.

#### ARTICLE IV.

##### *Municipal Authorities.*

Sec. 4. The municipal authorities of the city of Bluefield shall consist of four commissioners who shall constitute a board of affairs and be known as the "Board of Affairs of the City of Bluefield," and the "Council of the City of Bluefield" hereinafter provided for in article eight of this act.

Sec. 5. In addition to the municipal authorities mentioned in section four of this act, said city shall have a treasurer, auditor, police judge, city solicitor, chief of police, chief of fire department, city engineer, superintendent of highways, health commissioner, and such other officers and agents as the board of affairs may from time to time create or employ. The election of all appointive officers named or provided for in this section and the power to fix their salaries, shall be vested in the board of affairs unless otherwise provided. No appointment of any officer shall be made, nor shall any vacancy in office be declared, without the affirmative vote of at least three members of the board of affairs. The duties, in addition to those prescribed herein, of all appointive officers named or authorized in this act shall be prescribed by the board of affairs by ordinance.

#### ARTICLE V.

##### *Corporate Powers.*

Sec. 6. All the corporate powers of said city shall be vested in and exercised by the board of affairs, or under its authority, except as otherwise provided in this act.

Sec. 7. The board of affairs of said city shall have and are hereby granted power to have said city surveyed; to lay out, open, vacate, straighten, broaden, change grade of, grade, re-grade, curb, widen, narrow, repair, pave, and re-pave streets, alleys, roads,

squares, stops, sidewalks and gutters for public use, and to alter, improve, embellish and ornament and light the same, and to construct and maintain public sewers and laterals, and shall in all cases have power and authority to assess upon and collect from the property benefitted thereby such part of the expense thereof as shall be fixed by ordinance, except as hereinafter provided; to have control of all streets, avenues, roads, alleys and grounds for public use in said city, and to regulate the use thereof and driving thereon, and to have the same kept in good order and free from obstruction, pollution or litter on or over them; to have the right to control all bridges within said city, and the traffic thereover; to change the name of any street, avenue or road within said city, and regulate and cause the numbering and re-numbering of houses on any street, avenue or road therein; to provide for and regulate the naming of streets, avenues and public places; to regulate and determine the width of streets, sidewalks, roads and alleys; to order and direct the curbing, re-curbing, paving, re-paving and repairing of sidewalks and footways for public use in said city to be done and kept clean and in good order by the owners of adjacent property; to prohibit and punish the abuse of animals; to restrain and punish vagrants, mendicants, beggars, tramps, prostitutes, drunken or disorderly persons within the city, and to provide for their arrest and manner of punishment; to prohibit and punish by fine the bringing into the city by railroads or other carriers, of paupers, dangerous or objectionable characters or persons afflicted with contagious diseases; to control and suppress disorderly houses, houses of prostitution or ill-fame, houses of assignation, and gaming houses or any part thereof, and to punish those engaged in gaming; to prohibit within said city or within two miles thereof slaughter houses, soap or glue factories, and houses and places of like kind, and any other thing or business dangerous, unwholesome, unhealthy, offensive, indecent, or dangerous to life, health, peace or property; to provide for the entry into and the examination of all dwellings, lots, yards, enclosures, buildings and structures, cars, vehicles of every description and to ascertain their condition for health, cleanliness or safety; to regulate the building and maintenance of party walls, partition fences or lines, fire walls, fire places, boilers, smokestacks and stove pipes; to provide for and regulate the safe construction, inspection and repairs of all public and private buildings, bridges, basements, culverts, sewers, or other build-

ings or structures of any description; to take down and remove, or make safe and secure any and all buildings, walls, structures or superstructures at the expense of the owners thereof, that are or may become dangerous, or to require the owners or their agents to take down and remove them or put them in a safe and sound condition at their own expense; to regulate, restrain or prohibit the erection of wooden or other buildings within the city; to regulate the height, construction and inspection of all new buildings hereafter erected, and the alteration and repair of any buildings already erected or hereafter erected in said city, and to require permits to be obtained for such buildings and structures, and plans and specifications thereof to be first submitted to the building inspector; to regulate the limit within which it shall be lawful to erect any steps, porticos, bay windows, bow windows, show windows, awnings, signs, columns, piers, or other projection or structural ornaments of any kind for the houses or buildings fronting on any street of said city; to establish fire limits and to provide the kind of buildings and structures that may be erected therein, and to enforce all needful rules and regulations to guard against fire and danger therefrom; to require, regulate and control the construction of fire escapes, for any buildings or other structures in said city; to control the opening and construction of ditches, drains, sewers, cess-pools and gutters, and to deepen, widen, and clear the same of stagnant water or filth, and to prevent obstruction therein, and to fill, close or abolish the same, and to determine at whose expense the same shall be done; and to build and maintain fire station houses, crematories, jails, lock-ups, and other buildings, police stations and police courts, and to regulate the management thereof; to acquire, establish, lay off, appropriate, regulate, maintain, and control public grounds, squares and parks, hospitals, market houses, city buildings, libraries, and other educational or charitable institutions, either within or without the city limits; and when the board of affairs determines that any real estate in or out of the city is necessary to be acquired by said city for any such purpose, or for any public purpose, or is necessary in the exercise of its powers herein granted, the power of eminent domain is hereby conferred upon said city, and it shall have the right to institute condemnation proceedings against the owner thereof in the same manner, to the same extent and upon the same conditions as such power is conferred upon public corporations by chapter forty-two of the code of West

Virginia of the edition of one thousand nine hundred and six, and as now or may be hereafter amended; to purchase, sell, lease, or contract for and take care of all public buildings and structures and real estate deemed proper for the use of such city; and for the protection of the public, to cause the removal of unsafe walls, structures or buildings, and the filling of excavations; to prevent injury or annoyance to the business of individuals from anything dangerous, offensive or unwholesome; to abate or cause to be abated all nuisances and to that end and thereabout to summon witnesses and hear testimony; to regulate or prohibit the keeping of gunpowder and other combustible or dangerous articles; to regulate, restrain or prohibit the use of fire-crackers or other explosives or fireworks, and all noises or performances, which may be dangerous, annoying to persons or tend to frighten horses or other animals; to provide and maintain proper places for the burial of the dead, in or out of the city, and to regulate interments therein upon such terms and conditions as to price and otherwise as may be determined; to provide for shade and ornamental trees, shrubbery, grass, flowers and other ornamentation, and the protection of the same; to provide for the poor of the city, and to that end may contract with the proper authorities of Mercer county to keep and maintain the poor, or any number thereof, upon terms to be agreed upon; *provided, however,* that the said city of Bluefield shall not keep nor maintain the paupers of said city until such time as the county court of Mercer county shall relieve the said city of Bluefield from the payment of all taxes for the support of the paupers residing outside the corporate limits of said city; to make suitable and proper regulations in regard to the use of the streets, public places, sidewalks and alleys by street cars, foot passengers, animals, vehicles, motors, automobiles, traction engines, railroad engines and cars, and to regulate the running and operation of the same so as to prevent obstruction thereon, encroachment thereto, or injury, inconvenience or annoyance to the public; to prohibit prize fighting, cock and dog fighting; to license, tax, regulate or prohibit theaters, moving pictures, circuses, the exhibition of showmen, and shows of any kind, and the exhibition of natural or artificial curiosities, caravans, menageries, and musical exhibitions and performances, and other things or business on which the state does or may exact a license tax; to organize and maintain fire companies and departments, and to provide necessary apparatus, engines and implements for the same,

and to regulate all matters pertaining to the prevention and extinguishment of fires; and to make proper regulations for guarding against danger and damage from fires, water or other elements, to regulate and control the kind and manner of plumbing and electric wiring, airships, balloons, wireless stations, and other appliances for the protection of the health and safety of said city; to levy taxes on persons, property and licenses; to license and tax dogs and other animals, and regulate, restrain and prohibit them and all other animals and fowls running at large; to provide revenue for the city and appropriate the same to its expenses; to adopt rules for the transaction of business for its own regulation and government; to promote the general welfare of the city, and to protect the persons and property of citizens therein; to regulate and provide for the weighing of produce and other articles sold in said city and to regulate the transportation thereof, and other things, through the streets, alleys and public places; to have the sole and exclusive right to grant, refuse or revoke any and all licenses for the carrying on of any business within said city on which the state exacts or may exact a license tax; to establish and regulate markets and to prescribe the time for holding the same, and what shall be sold in such market, and to let stalls or apartments and regulate the same and to acquire and hold property for market purposes; to regulate the placing of signs, bill-boards, posters and advertisements in, or over the streets, alleys, sidewalks and public grounds of said city; to preserve and protect the peace, order and safety and health of the city and its inhabitants, including the right to regulate the sale and use of cocaine, morphine, opium and poisonous or dangerous drugs; to appoint and fix the places of holding city elections; to erect, own, lease, and authorize or prohibit the erection of gas works, electric light works or water works, telephone plants, and other public utilities in or near the city, and to operate or to regulate the operation of the same, and sell the products or services thereof, and to do any and all things necessary and incidental to the conduct of such business; to provide for the purity of water, milk, meats and provisions offered for sale in said city, and to that end provide for a system of inspecting the same and making and enforcing rules for the regulation of their sale, and to prohibit the sale of any unwholesome or tainted milk, meats, fish, fruit, vegetables, or the sale of milk containing water or other things not constituting a part of pure milk; to provide for inspecting dairies and

slaughter houses, whether in or outside of the city, where the milk and meat therefrom are offered for sale within said city, and to prohibit the sale of any article deemed unwholesome, and to condemn the same or destroy or abate it as a nuisance; to provide for the regulation of public processions so as to prevent interference with public traffic, and to promote the good order of the city; to prescribe and enforce ordinances and rules for the purpose of protecting the health, property, lives, decency, morality, cleanliness and good order of the city and its inhabitants, and to protect places of divine worship in and about the premises where held, and to punish violations of all ordinances even if the offenses under and against the same shall also constitute offense under the law of the state of West Virginia or the common law; to provide for the employment and safe keeping of persons who may be committed in default of the payment of fines, penalties, or costs under this act, who are otherwise unable or fail to discharge the same, by putting them to work for the benefit of the city upon the streets or other places in or out of the city provided by said city, and to use such means to prevent their escape while at work as the board of affairs may deem expedient; and the board of affairs may fix a reasonable rate per day as wages to be allowed such person until the fine and costs against him are thereby discharged; to compel the attendance at public meetings of the members of the board of affairs and council; to have and exercise such additional rights, privileges and powers as are granted to municipalities by chapter forty-seven of the code of West Virginia, as amended. For all such purposes, except that of taxation, and for purposes otherwise limited by this act, the board of affairs shall have jurisdiction, when necessary, for one mile beyond the corporate limits of said city.

And the board of affairs shall have the right to establish, construct, and maintain public markets on the ground which does or shall belong to said city, or which it shall acquire, by purchase or otherwise, and to sell, lease, repair, alter, or remove any public markets, or buildings which have been or shall be so constructed, and to preserve and protect the peace and good order at the same, and regulate the manner in which they shall be used.

To carry into effect these enumerated powers and all other powers conferred upon said city expressly or by implication in this and other acts of the legislature, the board of affairs of said city shall have the power, in the manner herein prescribed, to adopt and en-



force all needful orders, rules and ordinances not contrary to the laws and constitution of this state; and to prescribe, impose, and enforce reasonable fines and penalties, including imprisonment, in the city lock-up, jail, or station house and to work prisoners found guilty as the board of affairs may prescribe, and market the products of such labor, and with the consent of the county court of Mercer county entered of record, shall have the right to use the jail of said county for any purpose necessary to the administration of its affairs.

#### ARTICLE VI.

##### *Registration and Qualification of Voters.*

Sec. 8. Every person qualified by law to vote for members of the legislature of the state, and who shall have been a resident of said city for sixty days preceding the day of election, and a *bona fide* resident of the election precinct in which he offers to vote, shall be entitled to vote at all elections held in said city by or under the corporate authorities thereof.

Sec. 9. The board of affairs shall by ordinance provide for such regulations for the registration of voters as may be rendered necessary by state laws; except that at the first election hereunder the present council shall provide for such registration, and the registration already provided for, for the election to be held in the year one thousand nine hundred and nine, shall not be set aside or held illegal because of this section.

#### ARTICLE VII.

##### *Nomination of Candidates.*

Sec. 10. Candidates to be voted for at any municipal election for members of the board of affairs and members of the council, may be nominated by convention, primary or petition, in the manner and under the provisions now or hereafter prescribed by state laws relating thereto; *provided, however*, that for the election to be held on the first Tuesday in May, one thousand nine hundred and nine, no political party shall nominate more than four persons for the office of members of the board of affairs, no more than two of whom shall be from the same ward, and no more than four persons in each ward of the city for the office of members of the council, except however, that the political party whose candidate for mayor at the city election on the first Tuesday in May, one thousand

and nine hundred and eight, received the greater number of votes, shall not nominate more than two persons in each ward of the city for the office of members of the council; and thereafter at any election to be held either for electing a member to the board of affairs, or to the council, no political party shall nominate more than double the number to be elected to any office. If any certificate of nomination, or any petition for nomination of candidates for either the board of affairs or the council, shall contain more names than prescribed in this section for such office, then the ballot commissioners shall, for the first election to be held under this act, take the first four names for board of affairs as the nominees of such party for said offices, and said ballot commissioners shall take the first two names as nominees for council in each ward of the city of the political party casting the larger number of votes for its mayor at the election held in the city on the first Tuesday in May, one thousand nine hundred and eight, and the first four names as nominees for council in each ward of the city, of the other parties and of the name on other petitions; at any subsequent regular city election held hereunder, the ballot commissioners shall take the first two names for board of affairs, and the first two names from each party and petition and from each ward of the city, for council, as the nominees of such party for said office. And, *provided, further*, that there shall not be printed on any ticket on any ballot to be voted at any municipal election for the election of officers of the city, more names for the office of members of the board of affairs and council, than provided for in this section.

Sec. 11. In case of the nomination of candidates to be voted for to fill the vacancies on the board of affairs, no political party and no petition shall nominate more than double the number to be elected and such nominations shall be certified, and the names of the nominees printed on the ballot, in the manner prescribed in the section next preceding.

Sec. 12. Every person so nominated for member of the board of affairs, shall, within five days after his nomination has been certified by the political party making the nomination, or a petition therefor shall have been filed, make, under oath, and file with the recorder a statement of the political party to which he claims allegiance, or if he belongs to no party shall so state; and, if nominated by two or more parties, he shall state to which of them he belongs.

If such person fail to make the oath, and file the same, as herein prescribed, the ballot commissioners shall not place his name on the ballot to be voted at the approaching election.

#### ARTICLE VIII.

##### *Council.*

Sec. 13. The city of Bluefield shall have a council, to be known and styled the "Council of the City of Bluefield," and which shall be comprised of four persons from each ward of the city, and who shall be voted for and elected by the voters of each ward respectively, and in the manner hereinafter prescribed.

Sec. 14. No person shall be eligible to the office of council, except citizens entitled to vote at the election at which they are elected. The members of the present council of the city of Bluefield, entitled under the present charter to serve until June first, one thousand nine hundred and ten, shall each be members of the council provided for herein, and entitled to serve as such until the first day of June, one thousand nine hundred and eleven, or until their successors shall be elected and qualified. At the first election hereunder only one member of the political party casting the greater number of votes in each of the several wards at the city election held in May, one thousand nine hundred and eight, shall be elected in wards numbers one, two, four, six and eight, and two members of said party in each of the remaining wards; and two persons, not of said party, shall also be elected in each ward. And at the election of one thousand nine hundred and eleven, and thereafter, four persons shall be elected from each ward, not more than two of whom shall belong to the same political party. At the first election hereunder, the candidate belonging to the same party casting the greater number of votes in each of the several wards at the city election held in May, one thousand nine hundred and eight, receiving the highest number of votes for council in wards numbers one, two, four, six and eight shall be declared elected, and if more than one candidate belonging to such party receive the same number of votes, the council sitting as a canvassing board shall elect one of them as councilman, and the two persons belonging to said party receiving the highest number of votes in wards numbers three, five, seven and nine shall be elected. At said election the two persons (not of the same political party that received the highest number of votes

at the said election of May, one thousand nine hundred and eight, who shall receive the highest number of votes for council, shall be declared elected; if more than two would thus be elected, the council sitting as a canvassing board shall decide the tie. At the elections thereafter, four councilmen shall be elected from each ward, not more than two of whom shall belong to the same political party. The four persons receiving the highest number of votes shall be declared elected; but in any case where this would elect more than two persons from the same political party, then only the two from that party receiving the highest number of votes shall be declared elected, and any tie shall be determined at once by the canvassing board; and the two persons not of the same political party as the two already declared elected, and receiving the next highest number of votes, shall be declared elected, and any tie shall be determined by the canvassing board. If any person elected to the council fail to qualify as herein provided, within thirty days after his said election, or shall, after having qualified, resign from the council, or move from the city or his ward, his office shall be vacated, and the council shall by a majority vote of the members voting thereon, fill such vacancy for the unexpired term with some person from the same ward and of the same political party as the person whose vacancy of office is being filled. The term of office of all councilmen hereafter elected shall be two years.

It shall be unlawful for there to be more than two councilmen from any one ward at any time belonging to the same political party, and the circuit court of Mercer county is given the same jurisdiction to enforce this provision as is given in section twenty-four in case of the board of affairs.

Sec. 15. The council shall, at its first meeting after a majority of the newly elected members thereof shall have qualified, elect one of its members president of the body, whose term of office shall run with the term of the members of the body electing him. The council shall, by a majority vote of the members voting thereon, fill any vacancy in the office of president of its body by electing another member of the council to the office of president for the unexpired term, or may elect a president *pro tempore* at any time in the absence of the president.

Sec. 16. The auditor shall be *ex officio* clerk of the council, and

shall perform such duties pertaining thereto as the council may require of him.

Sec. 17. Whenever a majority of the newly elected members of the council shall have qualified, they and the old members in office shall enter upon the duties of their said offices, as a body, and supersede the former council.

#### *Powers of Council.*

Sec. 18. The right of veto on any franchise or ordinance passed or any license granted by the board of affairs is hereby conferred upon the council, in the manner hereinafter described. Such veto shall be by a majority vote of all members elected to said council, and the vote therein shall be taken by roll call of the members and entered of record in the minutes of the meeting.

The council shall have the right, from time to time, to demand of the board of affairs any specifications, facts, maps, plans, details, contracts, agreements, correspondence or other papers or documents affecting the city's interests or rights, and it shall be misfeasance and neglect of duty for the board of affairs to fail to comply with any such demand; and the council may likewise require reports from the board of affairs and from any officer of the city concerning any public business, thing, or matter or in which the city may be interested, and it shall be misfeasance and neglect of duty for the board of affairs or any official to fail to comply with any such requirement. The council may likewise from time to time make recommendations to the board of affairs as to any matter for the city's best interests or good.

Sec. 19. The council shall have the right to hear, consider and act on charges against any member of the board of affairs, and, after having heard proof of such charges, may remove such member and declare his office vacant by two-thirds vote of all members elected to said council, and the vote thereon shall be by roll call of the members and entered of record in the minutes of the meeting. But before such member shall be put to trial on said charges, he shall have at least ten days' written notice of the nature of said charges, and the time and place of a hearing thereon before said council. If the council, after hearing of said charges, shall remove said member from office, thereby declaring a vacancy in his said office of member of the board of affairs it shall, through its presi-

dent or otherwise, cause its action thereabout to be at once certified to the board of affairs, and thereafter such member shall cease to hold his office.

Sec. 20. No member of the board of affairs shall be removed from his office except for one of the causes mentioned in section six of article IV. of the constitution of West Virginia.

Sec. 21. The council shall make proper rules for its government not contrary to or inconsistent with any of the provisions of this act or the authority vested in the board of affairs; and it shall cause a record of its meetings and proceedings to be kept and recorded by its recorder in a well-bound book, which shall remain in the custody and at the office of the recorder and open to public inspection. A copy of the minutes of the proceedings of said council certified by the recorder under the seal of the city shall be admitted as evidence in any court of record in this state.

#### *Meetings of the Council.*

Sec. 22. The council shall meet on the first Monday of each month, at an hour and at the place to be fixed by it by the rules governing its body. The first meeting hereunder shall be called and the time fixed by the mayor not more than thirty days after the first election held hereunder, and notice thereof given to each member of the council.

Sec. 23. Special meetings of the council may be called by its president, or any ten members thereof, or by the board of affairs, or by the mayor, by notice published in two newspapers of the city of opposite politics, in two successive issues thereof, stating the time and object of the meeting. The holding of a special meeting of the council shall be *prima facie* evidence that the said notice required therefor was given as prescribed in this section, and no business shall be transacted at any special meeting of the council unless specially mentioned in the call for such meeting.

#### ARTICLE IX.

##### *Election and Duties of Board of Affairs, Officers, Etc.*

Sec. 24. At the first election held hereunder, there shall be elected four members of the board of affairs, not more than two of them shall be members of the same political party; and, according to the vote received by each, they shall be divided into two classes, and not

more than one member of each class shall or can belong to the same political party. The two receiving the highest number of votes, except as herein otherwise provided, shall belong to class A and shall serve for four years, or until their successors are elected and qualified; and the two receiving the next highest number of votes, except as herein otherwise provided, shall belong to class B and shall serve for two years, or until their successors shall be elected and qualified. And, at every election thereafter there shall be elected two members who shall serve for four years or until their successors shall be elected and qualified. If at said first election hereunder, two or more persons shall receive the highest and the same number of votes, the council then in office, shall immediately elect one of them as member of the board of affairs (and mayor as provided in section forty-four) and in class A, and then shall elect another receiving the same number of votes as member of the board of affairs, but if he be of the same political party as the first one elected, he shall be in class B. For the second member of class A the council shall declare elected the person receiving the same or the next highest number of votes and not of the same political party as the other members in class A, and for the second member of class B the council shall declare elected the person receiving the same or the next highest number of votes and not of the same political party as the other member of class B; and in all cases it shall be the rule that the person receiving the highest number of votes shall be elected member of the board of affairs, and that a tie in the first election shall be decided by council, and thereafter by the canvassing board; but that council cannot and shall not declare elected to class A or class B more than one person each of the same political party, nor can it by election in a case of a tie have more than one person in any party in either of said classes and at all subsequent elections the persons receiving the highest number of votes shall be declared elected as member of the board of affairs and mayor as provided in section forty-five; and the person receiving the next highest number of votes and not of the same political party as the one receiving the highest number of votes shall also be declared elected as member of the board of affairs, and if two or more persons receive the same and highest number of votes, the board of affairs as a canvassing board shall elect one of them as member of the board of affairs, and the person receiving the same number of votes and not of the

same political party as the first one elected, shall be declared as member of the board of affairs.

If at any election one or more vacancies in member of board of affairs are to be filled by election, the person receiving the highest number of votes and of the same political party as the person whose vacancy is being filled shall be declared elected; and if two or more persons of the same political party receive the highest and the same number of votes to fill such vacancy, then the canvassing board shall at once elect one of such persons to fill such vacancy; but it shall be unlawful to fill any vacancy on the board of affairs with any person not of the same political party as the person whose vacancy is being filled, and it shall be unlawful, by election, appointment or otherwise, for the board of affairs, at any time, to be composed of more than two members of the same political party. The circuit court of Mercer county, shall have jurisdiction by prohibition, *mandamus*, and injunction, at the suit of not less than five taxpayers of the city to restrain and prohibit any official or governing body from violating this section and to compel and to command any officials or governing body to enforce and faithfully observe the provisions of this section; and in any such proceeding such court may inquire into the politics of any person elected or appointed, so that neither by deceit, misrepresentation, false pretense, or subterfuge, the provisions of this section may be violated.

#### *Contested Elections.*

Sec. 25. All contested elections shall be heard and decided by the board of affairs for the time being, and the contest shall be made and conducted in the same manner as provided for in such contests for county and district offices; and the board of affairs shall conduct its proceedings in such cases as nearly as practicable in conformity with the proceedings of the county court in such cases, except that for the first election hereunder the council shall hear such contest.

#### *Oath of Officers.*

Sec. 26. All officers, elective and appointive, shall make oath, before some one authorized to administer oaths, that they will support the constitution of this state, and will faithfully and impartially discharge the duties of their respective offices to the best of



their skill and judgment; that they will not administer their respective offices with the aim to benefit or injure any political party; and, in the case of members of the board of affairs they shall add in their oath that they are not, or will not, during their term of office become pecuniarily interested directly or indirectly, in any contract with the city, or any franchise, or any liquor license granted by it, or the purchase of supplies therefor. When the officer shall have made such oath in writing and filed the same with the recorder, and shall have given bond required of and accepted from him, he shall be considered as having qualified for the office to which he was elected or appointed; *provided*, that if any person elected as member of the board of affairs shall not qualify for said office as herein prescribed within ten days after he shall have been officially declared elected thereto, said office shall *ipso facto* become vacant, and said vacancy shall be filled in the manner provided for in this act.

#### *Bond of Officers.*

Sec. 27. Each member of the board of affairs, and the recorder, treasurer, auditor, city solicitor, health commissioner, chief of police, chief of fire department, shall, before entering upon the discharge of their duties, give an official bond, conditioned for the faithful performance of their respective duties as prescribed in this act or any ordinance now or hereafter passed, in amounts as follows: Each member of the board of affairs five thousand dollars; the treasurer, forty thousand dollars; the auditor, two thousand dollars; the recorder and city solicitor, three thousand dollars; health commissioner, chief of police, and the chief of the fire department, each one thousand dollars.

The board of affairs may require additional bond from any of said appointive officers, and may likewise require bond, in whatever sum they may fix, of any other appointive officer. All bonds of appointive officers shall, before their acceptance, be approved by the board of affairs; and the bonds of the members of the board of affairs shall be approved by the retiring board of affairs, except that bonds of the first board of affairs shall be approved by the present council. All other bonds of whatsoever kind shall not be accepted until first approved by the board of affairs. The minutes of the meeting of the board shall show all matters touching the consideration or approval of all bonds, and when said bonds are approved

and accepted they shall be recorded by the auditor in a well-bound book kept by him at his office for that purpose, which book shall be open to public inspection; and the recordation of such bonds as aforesaid shall be *prima facie* proof of their correctness, and they, as so recorded, shall be admitted as evidence in all the courts of this state. The auditor shall be the custodian of all bonds, except those given by him, and as to them the city treasurer shall be custodian.

All bonds, obligation or other writings, taken in pursuance of any provisions of this act shall be made payable to "The City of Bluefield," and the respective persons, and their heirs, executors, administrators and assigns bound thereby shall be subject to the same proceedings on said bonds, obligations and other writings, for enforcing the conditions of the terms thereof, by motion or otherwise, before any court of record held within the county of Mercer, that collectors of county levies and other sureties are or shall be subject to on their bonds for enforcing the payment of the county levies.

## ARTICLE X.

### *Departments of City Government.*

Sec. 28. In order to better dispatch the business of the city, and assign more in detail the duties of the members of the board of affairs, the government of said city is hereby divided into four departments, to-wit:

1. Department of finance, embracing the departments of finance, taxation and public utilities.
2. Department of public safety, embracing the department of law, fire, public buildings and grounds.
3. Department of police, embracing the departments of police, health and charity.
4. Department of streets, embracing the departments of streets and sewers.

The mayor, at the first regular meeting of the board of affairs following their election and qualification, shall designate himself and each of the other members at the head of one of the said departments of government, and the members thus assigned shall be styled the commissioners of that department, to-wit:

1. "Commissioner of finance."
2. "Commissioner of public safety."

3. "Commissioner of police."

4. "Commissioner of streets."

And he shall have immediate care and supervision of his department, but subject always to the control or orders of the board of affairs. The business, and the labors incident thereto, of each of the departments shall be that which properly falls within the scope of the particular department, but which, in details, may be fixed from time to time by the board of affairs. The head of each department shall see to the performance of all business coming within his department, or which may be referred thereto, or to any officer thereunder from time to time, but no member of the board of affairs, either as a commissioner of a department or otherwise, shall employ or hire any one to do any service nor shall he make any appointment except with the consent and authority of the board of affairs. The board of affairs may by ordinance, fix the salaries of all appointive officers which shall be subject to the veto of the council as provided in section eighteen of this act; but laborers by the day and those doing special work may be paid by the board of affairs without fixing the price by ordinance.

The commissioner of police, as a part of his duties, shall establish and maintain a free employment bureau.

Sec. 29. The commissioner of each department shall keep a public office at which he may be found or communicated with during stated hours to be fixed by him or the board of affairs, unless his official duties call him elsewhere; and the board of affairs shall, by ordinance, prescribe the powers and duties of each commissioner, and of all officials, and the scope of each department.

#### *Meetings of Board of Affairs.*

Sec. 30. The board of affairs shall have at least one regular public meeting each week at some place provided for that purpose, and on a stated day and at an hour fixed by ordinance or rules governing the board.

Sec. 31. Special meetings of the board may be called by the mayor or any two members of the board by personal notice given to the other members thereof, stating the time and object of the meeting and no business except that stated in said notice shall be considered or acted upon at said meeting. All meetings of the board shall be open to the public.

*Quorum.*

Sec. 32. A majority of the whole number of members elected to the board of affairs and a majority of the whole number of members elected to council shall be necessary for the transaction of business before said respective bodies, but a smaller number in either body may adjourn from time to time and may compel the attendance of absent members, in such manner and under such penalties, as either body may by rules provide.

*How Vote Taken.*

Sec. 33. Unless otherwise herein provided, the vote upon any question or motion before the board of affairs may be *viva voce* when unanimous; but if the question or motion does not receive the unanimous vote of the members present, then the vote shall be taken by roll call of the members and made a part of the minutes of the meeting; and when the vote is unanimous the minutes shall so state.

*Minutes of Meetings.*

Sec. 34. The auditor shall be *ex officio* clerk of the board of affairs. Said board shall cause detailed minutes of its meetings and proceedings to be kept by the auditor in a well-bound book for that purpose, which shall remain in the custody of the auditor at his office and open to public inspection. The minutes of every regular or special meeting shall be read publicly at the next regular or special meeting of the board, and, after being corrected, shall be signed by the mayor and auditor, and a copy from such records certified by the auditor under the seal of the city shall be admitted as evidence in any court of record in this state. They shall read publicly all recommendations of council since the last meeting and preserve and file the same.

*Cannot Hold Any Other Office.*

Sec. 35. The members of the board of affairs shall not hold any other city office, except as prescribed in this act, nor be an employee of the city in any other capacity with a compensation, nor hold any other office, with or without compensation, which may interfere with the faithful discharge of their duties as members of the board of affairs.

Sec. 36. No appointive officer of the city shall hold two offices with the city at the same time, nor become the employee of the city in any other capacity, without first having the consent of the board of affairs. All appointive officers (except those under civil service), shall hold for a term of two years unless sooner removed by and at the pleasure of the board of affairs, and until their successors are appointed and qualified.

#### *Contract and Purchase of Supplies.*

Sec. 37. The board of affairs shall purchase all of the supplies and materials for the departments of the city government at the lowest price possible considering the quality and grade of the supplies desired. And, whenever any such supplies or materials involve the expenditure of five hundred dollars, or more, the board shall advertise by reasonable notice in at least two newspapers published in the city, of opposite politics, for bids on supplies or materials to be furnished, and shall award the contract thereon (unless all bids are rejected) to the lowest bidder, taking from such bidder a written contract and bond thereon, to be approved by the board, for the faithful performance of said contract.

No contract shall be awarded, nor any money appropriated for any purpose without the affirmative vote of at least three members of the board of affairs.

#### *Eligibility and Salaries.*

Sec. 38. Any one entitled to vote for members of the legislature shall be eligible to any position, office or appointment hereunder except member of the board of affairs. Any one entitled to vote for members of the legislature and who, for the year next preceding, has paid taxes upon property within the city of the value of at least five hundred dollars shall be eligible to the board of affairs.

Sec. 39. Members of the board of affairs shall each receive a salary not exceeding fifteen hundred dollars per annum, but when the city shall have a population of thirty thousand people such salary shall not exceed two thousand dollars each, which salaries shall be fixed by ordinance. But whenever the board of affairs shall fail to make their appointments of all appointive officers for a period of thirty days, each member shall forfeit his salary thereafter, and until such appointments shall be made, and all disbursing and ac-

counting officers shall take official notice of such failure to make such appointments, and no order, warrant, check or draft shall be issued for such salary so forfeited.

Sec. 40. Any member of the board of affairs, or any officer connected with the city government pursuant to any law of this state or ordinance of the city now or hereafter passed, and who shall, in his official capacity or under color of his office, knowingly or willfully, or corruptly vote for, assent to or report in favor of, or allow, or certify for allowance, any claim or demand against the city, which claim or demand shall be on account or under color of any contract or agreement not authorized by or in pursuance of the provisions of this act or the ordinances of the city, or any claim or demand against the city which claim or demand or any part thereof shall be for work not performed for and by authority of said city, or by the board of affairs, or for the supplies or materials not actually furnished thereto pursuant to law or ordinance, and every such member or officer as aforesaid who shall knowingly vote for, assent to, assist or otherwise permit, or aid, in the disbursement or disposition of any money or property belonging to the city to any other than the specific use or purpose for which such money or property shall be or shall have been received or appropriated or collected or authorized by law to be collected, shall, upon conviction thereof, be punished by imprisonment in the county jail for not more than one year or by fine of not less than five hundred dollars, nor more than two thousand dollars, or by both. But the board of affairs shall pay any just obligation made by the city and keep and perform all contracts, agreements and obligations made under the law as it was the day before this act goes into effect, and for which and on which the city is liable or obligated when the board of affairs herein provided for goes into office.

#### *Filling Vacancies in Board of Affairs.*

Sec. 41. Whenever a vacancy, from any cause whatever, shall occur in the office of member of the board of affairs and the time for a regular municipal election, as provided for in section twenty-four herein, is not within six months therefrom, then the board of affairs shall call a special election, at which the qualified voters of the city as shown by the last city registration shall fill such vacancy by the election of some person therefrom, but the person so elected

must be eligible to hold said office and shall not be of the same political party and of the same political faith as any two members of the board who at the time are members thereof. Such special election shall be governed by the laws of the state relating to elections and as prescribed in this act for regular elections.

Sec. 42. If there shall occur at any one time two or more vacancies on the board of affairs, the council, by a majority vote of all the members elected thereto, shall fill such vacancies for the time being, but the person so appointed shall be of the same political party as the member of said board whose office was vacated and is being filled; and in no event shall such appointments be made so as to give any political party a majority on the board of affairs.

*Provided*, before any such appointment shall become final, the person so appointed shall make and file the oath required by section twenty-six of this act; and after the filing of said oath the council may, if it so elects, by a majority vote of all members elected thereto, recall said appointments, or any one thereof, and such appointment from that time shall be void and of no effect, and the vacancy thereby shall be filled in the same manner and under the condition prescribed in the first instance.

Members of the board of affairs thus appointed by the council to fill vacancies on the board of affairs, shall before entering upon the discharge of their duties, take the oath required of other officers of the city, but they shall not be required to give any official bond; and they shall hold their said offices only until their successors shall have been elected and qualified as prescribed in section forty-one of this act.

#### *Attendance of Witnesses, Punishing Contempts, Etc.*

Sec. 43. The board of affairs and the council in the exercise of their respective powers and the performance of their respective duties, as prescribed by this act and by the laws of the state, shall have the power to enforce the attendance of witnesses, the production of books, and papers, and the power to administer oaths in the same manner and with like effect, and under the same penalties, as notaries public, justices of the peace and other officers of the state authorized to administer oaths under state laws; and said board of affairs and said council shall have such power for contempts as is conferred on county courts by section thirteen of chapter thirty-

nine of the code. All process necessary to enforce the powers conferred by this act on the board of affairs and council shall be signed by the mayor (or acting mayor) and the president of the council, respectively, and shall be executed by any member of the police force.

#### *Absence of Officers.*

Sec. 44. When any member of the board of affairs or any appointive officer of the city shall from sickness or other cause be unable, for a short space of time, to attend to the duties of his office, the board of affairs, in case of the absence of a member of said board, may designate another member thereof to attend to the duties of such absent member, in addition to the duties already devolving upon him in the capacity of member of the board; and, in case of the absence of any appointive officer, the board may appoint some other officer of the city or other person to perform the duties of such officer, during his absence, either with or without the salary, in whole or in part, of such absent officer.

### ARTICLE XI.

#### *Mayor.*

Sec. 45. The person receiving the highest number of votes for member of the board of affairs at the first election hereunder shall be duly elected mayor for the term of four years, or until his successor shall be elected and qualified; and the person receiving the highest number of votes at the election in one thousand nine hundred and eleven and who shall serve as member of the board of affairs the first two years of his term, shall be mayor for the term of two years beginning on the first day of June, one thousand nine hundred and thirteen; and at every regular election after one thousand nine hundred and eleven, the person receiving the highest number of votes for a full term as member of the board of affairs, shall be thereby elected mayor for the term beginning on the first day of June, two years after the beginning of such full term, so that after the first term of mayor a member of the board of affairs receiving the highest number of votes, will be mayor after he shall have served two years as such member. In the event that a member of the board of affairs who has, at any election, received the highest number of votes so as to entitle him to serve as mayor, shall die, resign, be re-



moved from office as a member of the board of affairs, or become ineligible, or for any cause cannot or does not qualify as mayor, then the board of affairs shall designate as mayor that person who at the election at which the mayor was elected, received the next highest number of votes for member of the board of affairs; and if the latter be ineligible, or fail to qualify for any cause, then the board of affairs shall designate the person who at said election received the next highest number of votes and so on. If at any time there be, for any cause, a lack of an eligible person hereunder entitled to serve as mayor, then the board of affairs shall designate a mayor from its members, and if the board cannot agree upon any one to serve at its first meeting, then the board shall call a meeting of council to fill such vacancy; which meeting shall be held within ten days after such failure of the board to elect. And if the board do not call the council meeting, then any member of council may do so, and the council shall fill such vacancy in the office of mayor from among the members of the board of affairs. If at any time, by death, resignation, or otherwise, the membership of the board of affairs be reduced below three, the council shall fill the vacancies at a meeting called, as in this article is provided. But the persons elected shall be of the same politics as those whose vacancies are filled by such election, it being unlawful for more than two members of the board of affairs to belong to the same political party. If at the first election two or more persons receive the same and the highest number of votes, then the council sitting as a canvassing board shall elect one of them as mayor for the term of four years.

## ARTICLE XII.

### *Franchises and Ordinances.*

Sec. 46. All franchises granting the right of occupancy of any portion of the streets of the city for work of public service, shall be granted by ordinance by the board of affairs, but no such franchise shall hereafter be granted except upon the following restrictions and conditions:

No grant of any such franchise shall be made without, at the time of making it, providing that the grantee shall indemnify the city against all damages caused by construction, maintenance or operation of such works. All reasonable additional provisions and conditions may be made for the protection of the public, necessary

damage or inconvenience by reason of the construction, maintenance or operation thereof.

No grant of a franchise for the extension of or an addition to any line or work of public service through, over or under any additional street or territory of the city shall be made for a period extending beyond the time limited for the expiration of the franchise of the principal work of which it is an extension, and if the franchise of the principal work is one granted before this act goes into effect and not limited as to time, any franchise granted for an extension or addition thereto shall nevertheless be made subject to the conditions hereof, including a time limit of not exceeding fifty years.

The board of affairs shall, in all franchises hereafter granted, embody therein a plainly expressed condition where the franchise is for work to be useful chiefly to the citizens of the city, that at the expiration of such franchise the grantee shall, if required by the board of affairs or the governing body of the city, sell to the city the plant at what it is then worth. If the city and the owner of the plant cannot agree upon its worth, then the value shall be ascertained by an impartial arbitration, one arbitrator to be selected by the city, one by such owner of the plant, these two to select the third and the decision of any two to be binding upon both parties.

No franchise or ordinance shall be passed without the affirmative vote of at least three members of the board of affairs.

Sec. 47. When any franchise shall have passed the board of affairs it shall not become effective until after the next regular meeting time of the council or a special meeting time of said body called to act on such franchise, and not then if said council at such meeting time expresses its veto to said franchise, as provided in section eighteen of this act.

Sec. 48. If any ordinance passes the board of affairs it shall become and remain effective as therein prescribed, unless vetoed by the council at its next regular meeting time, or special meeting time called to act on said ordinance.

Sec. 49. Whenever the council shall express its veto of any franchise, license or ordinance passed by the board of affairs, it shall, not later than the second day thereafter, cause such franchise or ordinance with its veto thereof and its written reasons therefor, addressed to the board of affairs, to be transmitted to the auditor and the auditor shall submit the same to the board of affairs at its next

regular meeting or special meeting called for that purpose, which shall be noted in the minutes of said meeting; but a failure to transmit such franchise, license or ordinance within said time shall not render such veto void. If the franchise, license or ordinance shall be changed and again passed by the board of affairs it shall be treated as a new or original ordinance and subject to the veto power of the council.

Sec. 50. If there shall be a tie vote on the passage of any franchise, license or ordinance before the board of affairs, the mayor shall at once transmit said franchise, license or ordinance, with a written statement that the vote on the passage of the same before the board of affairs was a tie to the president of the council, who shall lay the same before said council at its next regular meeting time thereafter, or prior special meeting time called for that purpose. If, upon consideration of said franchise or ordinance by the council, a majority of all the members elected to said council shall vote for the passage of said franchise or ordinance or the granting of said license as transmitted from the board of affairs, it shall be considered passed and adopted, and shall become effective as prescribed by the terms thereof.

The council, through its president or otherwise, after the expiration of the time for the consideration of said franchise, license or ordinance shall at once transmit the same, with the action of the council, if any, addressed to the board of affairs, to the auditor, who shall call the same to the attention of the board of affairs at their next regular meeting, or special meeting called for the purpose, at which shall be noted in the minutes the action of the council on said franchise or ordinance.

Sec. 51. Publication of notice to present franchise and other preliminaries prescribed by the laws of the state relating thereto, shall be had in the manner prescribed by state laws, before the board of affairs shall act on any such franchise; but the passage of any franchise shall be *prima facie* proof that such notice was given as prescribed by law.

Sec. 52. The style of any ordinance enacted by the board of affairs shall be: "Be it ordained by the board of affairs of the city of Bluefield."

Sec. 53. No ordinance shall be passed, except by bill, and no bill shall be so amended in its passage as to change its original purposes. All bills must be in writing or printed and presented at the regular weekly public meeting of the board of affairs and read in

full by the recorder. No bill shall be considered for final passage at the meeting at which it was introduced, but at any subsequent regular weekly public meeting of the board of affairs such bill may be taken up by the board of affairs for consideration and final action. No bill except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated, shall contain more than one subject which shall be clearly expressed in its title. No bill shall become an ordinance unless on its final passage three of the members of the board of affairs vote in its favor and the vote be taken by yeas and nays, and the names of the members voting for and against the same be entered of record in the minutes of the proceedings of the board of affairs. No ordinance shall be revived or re-enacted by mere reference to the title thereof, but the same shall be set forth at length as if it were an original ordinance, nor shall any ordinance be amended by providing that designated words thereof be stricken out, or that designated words be inserted, or that designated words be stricken out and others inserted in lieu thereof, but the ordinance or sections amended shall be set forth in full as amended. All ordinances in force at the time this charter goes into effect not inconsistent therewith, shall remain in full force until altered or repealed as herein provided and all rights, actions, proscriptions and contracts of the city not inconsistent therewith shall continue to be valid as if this act had not been passed.

Sec. 54. All ordinances passed by the board of affairs and all vetoes of the council, shall be spread *in extenso* upon the record of the proceedings of the said board of affairs, and at the next regular weekly public meeting after the receipt of any veto of the council, the same shall be read in the open meeting of said board. The board of affairs shall provide a well bound book, in which shall be copied by the auditor all ordinances in the order in which they are passed, which ordinances so copied shall be compared with the originals by the mayor, and shall be signed by him when found correct. Such books shall be indexed so as to show in brief form the substance of the ordinance, and copies therefrom certified by the auditor under the seal of the city shall be received by all courts and justices in this state as evidence, but the council may adopt, by ordinance properly designating and describing it, a code of laws and ordinances which, when adopted, shall be printed in book form, or it

may be adopted as a whole after it is printed, and the said code shall be and become the laws and ordinances of said city, and shall be received as such in all courts of this state, and the printed volume published under the orders of the board of affairs shall be so received as evidence of what is printed therein until errors or omissions be affirmatively shown therein.

Sec. 55. It shall be the duty of the board of affairs, except as hereinafter provided, to cause such of the ordinances imposing a penalty, fine or assessment, and such other ordinances of a public and general nature as they may deem best calculated to give general information to the citizens, to be published within five days in two newspapers of opposite politics published in said city; but the failure to publish any such ordinance, unless otherwise herein provided, shall not invalidate said ordinance.

Sec. 56. Whenever it is provided by any statute, ordinance, franchise or contract that any work is to be done or approved by the council of the city of Bluefield or any committee of said council, or that any notice, or order may or shall be given by the said council, or any committee thereof, it shall hereafter be deemed a compliance with the said terms of said statute, ordinance, franchise or contract if said work is done or approved, or said order or notice is given by the board of affairs, which board is hereby declared to be to such an extent, the successor of the council of the city of Bluefield.

### ARTICLE XIII.

#### *Police Judge and Other Officers.*

Sec. 57. All persons elected or appointed to the offices named in this act shall be conservators of the peace within said city, and they, and any other officer provided for under this act, may be given authority of police officers by the board of affairs.

The police judge shall be *ex officio* a justice and conservator of the peace, with authority to issue process for all offenses committed within the police jurisdiction of the city of Bluefield of which a justice of the peace has jurisdiction under state statutes, and for all violations of any city ordinances, and shall have charge of and preside over the police court of such city; and may commit persons charged with felony or misdemeanor to jail or take bond for their appearance before the grand jury of the circuit or criminal courts of Mercer county; he shall keep an accurate record of all his judi-

cial proceedings in said court, showing the style of each case, which record shall be indexed and numbered. It shall be his duty to hold daily sessions of his court, Sunday excepted. Before trying any person charged with any violation of any ordinance he shall issue his warrant specifying the offense or violation charged; he shall render judgment in any case as the law of the state or the ordinance of the city applying thereto may require; he shall also have the power to issue executions for all fines, penalties and costs imposed by him, and he may require the immediate payment thereof, and in default of such payment, may commit the party so in default to the jail of the county of Mercer, or place of imprisonment in said city until the fine and penalty and costs shall be paid or satisfied, to be employed during the term of imprisonment as hereinafter provided, but the term of imprisonment in any such case shall not exceed thirty days, and in all cases where a person is sentenced to imprisonment or to the payment of a fine of ten dollars or more, such person shall be allowed an appeal from such decision to the corporation court of the city of Bluefield, or the criminal court of said Mercer county upon the execution of an appeal bond, with surety deemed sufficient by the said police judge in a penalty double the amount of the fine and costs imposed by him, conditioned that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him on such appeal, and in no case shall judgment for a fine of less than ten dollars be given by the police judge if the defendant, his agent or attorney, object thereto. If such appeal be taken, the warrant of arrest, the transcript of the judgment, the appeal bond and other papers of the case shall be forthwith delivered by the said police judge to the clerk of the said court and the court shall proceed to try the case as upon indictment or presentment and render such judgment, including that of cost, as the law and the evidence may require.

The expenses of maintaining such persons committed to the jail of the county by such police judge shall be paid by the city. The police judge shall account for and pay over the amount of all fines collected by him weekly to the treasurer of the city and shall make monthly reports thereof and of all other matters pertaining to his office to the board of affairs of the city. In the absence of the police judge the auditor of the city shall act as such police judge with the same power and authority.

Sec. 58. The police judge if an attorney at law, shall not prac-

tice in said police court or as attorney or counsellor in any case appealed or removed therefrom, but shall have the right to practice law as attorney in other courts and cases; *provided*, that he shall not practice law in criminal cases in Mercer county.

#### ARTICLE XIV.

##### *Licenses.*

Sec. 59. Whenever anything for which a state license is or may be required is to be done within said city or within two miles of the corporate limits thereof, the board of affairs as herein provided may by ordinance require a city license to be had for doing the same, the amount of which license shall be fixed by the board of affairs, in no case, however, to be less than the amount charged by the state for a license for doing the same thing, and may in any case, require from the person licensed a bond, with sureties and in such penalty and with such conditions as it may deem proper, and the board of affairs on notice, may revoke such license at any time if the condition of the said bond be broken; and no license to sell strong or spirituous liquors or wine or beer, ale, porter or drinks of like nature, within said city, or within two miles of the corporate limits thereof, shall be granted by the county court of Mercer county, unless the person applying therefor shall produce to said county court the certificate of the board of affairs of said city, that said board of affairs has granted a city license authorizing said person to sell as aforesaid and the same has not been vetoed by the council as herein provided for.

A person assessed with a city license for the sale of strong or spirituous liquors, or wine or beer, ale, porter or drinks of like nature within said city or within two miles of the corporate limits thereof, shall pay said tax to the treasurer of the city before any such license be granted to him by said board of affairs. The board of affairs may impose a license and assess a tax thereon on all wheeled vehicles for public hire and upon all dogs kept within said corporate limits. The board of affairs may prescribe, impose and enforce reasonable fines and penalties, including imprisonment, under the order of the police judge of said city, or the persons lawfully exercising his functions, upon any person carrying on, or attempting to carry on, any business for which a city license is required, without first obtaining a city license therefor and paying the city license tax assessed thereon. All licenses provided for in

this act shall be paid to the treasurer of the city, and for the purpose of enforcing the provisions of this section the city shall have police jurisdiction for two miles beyond the corporate limits thereof.

Sec. 60. The license of any person issued by said city who shall be convicted in any court of competent jurisdiction of the illegal sale of spirituous liquors or drinks of like nature, may be revoked at the pleasure of the board of affairs, and in the event of a second conviction of the same person for any illegal sale of such liquor or drinks of like nature, such license shall be revoked by the board of affairs; *provided*, that for one such conviction of any person holding such a license of the violation of any law or ordinance forbidding the sale of such articles on Sunday, the board of affairs shall revoke such license and no license shall be thereafter granted him.

The board of affairs shall have the power to make all regulations and pass all ordinances necessary and proper concerning the granting and revoking of all licenses.

In order to prevent any combination or collusion concerning licenses, the board of affairs shall prescribe, by ordinance, the basis upon which liquor license shall or may be granted and shall prescribe the number thereof according to population, location or by some other fair basis; and after such ordinance or ordinances shall have been passed the council shall have power to postpone its action upon the granting of any license till the board of affairs shall have granted the number authorized by such ordinance to be granted. and it shall be lawful for the council to revoke any license or licenses whenever it shall be charged before it by any five taxpayers, and, after notice to the licensee, proved to its satisfaction, that by collusion, fraud or combination, the benefit of any license or licenses is controlled or enjoyed by any trust or combination to control the liquor business.

## ARTICLE XV.

### *Nuisances.*

Sec. 61. The board of affairs of said city shall have authority to abate and remove all nuisances in said city. It may compel the owners, agents, assignees, occupants or tenants of any lot, premises, property, building or structure, upon or in which any nuisance may be, to abate and remove the same by orders therefor, and by ordinance provide a penalty for the violation of such orders.



Said board of affairs may also by its own officers, appointees and employees abate and remove nuisances. It may by ordinance regulate the location, construction, repair, use, emptying and cleaning of all water closets, privies, cess-pools, sinks, plumbing, drains, yards, lots, areaways, pens, stables and other places, where offensive, unsightly, unwholesome, objectionable or dangerous substances or liquids are, or may accumulate, and provide suitable penalties for violation of such regulations, which may be enforced against the owner, agents, assignee, occupant or tenant, of any premises or structure where such violation may occur.

If the owner, agent, tenant, assignee, or occupant, of any such premises, lot, property, building or structure, as is mentioned herein, shall fail or refuse to abate or remove any such nuisance, as mentioned herein, or to comply with the provisions of any such ordinance, and the regulations herein contained, the said board of affairs may have said nuisance abated or the provisions of said ordinance or ordinances carried out, after reasonable notice to said owner, occupant, tenant, agent or assignee of its intention so to do, and collect the expenses thereof, with one per centum per month interest added from the date of said notice, from the said owner, occupant, tenant, agent, or assignee, by distress or sale, in the same manner in which taxes levied upon real estate for the benefit of said city are herein authorized to be collected, and the expense shall remain a lien upon said lot, or part of lot, the same as taxes levied upon real estate in said city; which lien may be enforced by a suit in equity before any court having jurisdiction, as other liens against real estate are enforced. In case of non-resident owners of real estate such notice may be served upon any tenant, occupant, assignee, or rental agent, or by publication thereof once a week for not less than two consecutive weeks in two newspapers of opposite politics, published in said city.

And in all cases where any tenant, occupant or agent is required to abate and remove any nuisance under the provisions of this section, or comply with the provisions of any such ordinance as is mentioned herein, the expense thereof may be deducted out of the accruing or accrued rent of said property or amount due said owner from said agent, and such tenant, occupant or agent may recover the amount so paid from the owner, unless otherwise especially agreed upon.

Any expense incurred by the board of affairs as herein provided, in the manner aforesaid, may be collected in the manner herein provided, notwithstanding the imposition of any other penalty or penalties upon any of the persons named herein, under any of the provisions of this act. The abatement or removal of any such nuisance by the board of affairs at the expense of said city, as herein provided, shall be *prima facie* proof that the said notice to the owner, occupant, tenant, agent or assignee, was given as herein prescribed.

Sec. 62. The board of affairs may require all owners, tenants, occupants of improved property which may be located upon or near any street or alley along which may extend any sewer or system of sewerage, which the said city may construct, own or control, to connect with such sewer, or system of sewerage, all privies, ponds, water closets, cess-pools, drains, or sinks located upon their respective properties or premises so that their contents may be made to empty into such sewer or system of sewerage, and shall have the right to charge a reasonable amount for the right to connect to such sewers.

## ARTICLE XVI.

### *Sidewalks.*

Sec. 63. The board of affairs shall have the right and authority to establish the width of any sidewalk on any street, alley, or public square, or portion thereof in said city, to cause to be put down a suitable curb of brick, stone or other material along and for the footways and sidewalks of the streets, alleys or public squares or portion thereof, and to order the construction, relaying and repair of sidewalks and gutters of such material and width, and in such manner, as the board may reasonably prescribe, by the owners or occupants of the lots or parts of lots facing upon said streets, alleys and public squares, and in case of a failure or refusal of any such owners or occupants of the lots or parts of lots to construct, relay or repair such sidewalks and gutters when required, it shall be lawful for the board of affairs to have such sidewalks and gutters constructed, relaid or repaired, and levy and collect the expense thereof with one per centum per month interest added after a demand of thirty days has been made by the treasurer of the city from the

said owner, owners, occupant or occupants or any of them; and in all cases of such assessment, whether for the construction, relaying or repairing of sidewalks or gutters, payment thereof shall be made to the treasurer within thirty days after the completion of the work and demand made, and if not so paid the board of affairs is hereby authorized to collect or cause to be collected the expense thereof with one per centum per month interest added after the work has been completed and a demand of thirty days, and they shall have the power to collect or cause to be collected the same from said owner, owners, occupant or occupants, or any of them, by distress and sale, in the same manner in which taxes levied upon real estate for the benefit of the said city are herein authorized to be collected, and in addition there shall be a lien upon the real estate against which any such assessment has been levied for the construction, relaying and repairing of sidewalks and gutters as herein provided, which lien may be enforced by a suit in equity before any court having jurisdiction as other liens against real estate are enforced, and it shall be the duty of the board of affairs to cause to be certified to the clerk of the county court of Mercer county their order laying an assessment authorized by this section. The clerk of the county court of Mercer county is hereby required to record and index such assessments in the proper trust deed book in the name of each person against whose property assessments appear therein; *provided, however,* that a reasonable notice shall first be given to said owner or occupant, or their agent, that they are required to construct, relay or repair such sidewalks or gutters. In case of non-residents, who have no known agent in said city, such notice may be given by publication for not less than once a week for two consecutive weeks in any newspaper printed in said city; and in all cases where a tenant shall be required to construct, relay or repair sidewalks or gutters in front of the property of his or her occupancy, the expense of such construction, relaying, or repairing may be deducted out of the accruing rent of said property, and he may recover the amount so paid from the owner, unless otherwise especially agreed upon. The laying or construction of any such sidewalks by said city shall be *prima facie* proof that the said notice, to the owner (resident or non-resident) or occupant, or their agent, was given as herein required.

## ARTICLE XVII.

*Taxes.*

Sec. 64. The board of affairs shall have power and authority to levy taxes on all property subject to taxation within the city in accordance with the provisions of chapter nine of the acts of the legislature of West Virginia, special session of one thousand nine hundred and eight, and as it may be amended, and in the making of such levies the said board of affairs shall comply with all the provisions of said act as the same now exists or as it may be hereafter amended in so far as it applies to the laying of levies by municipalities. The taxes so levied as aforesaid shall be levied upon the values of the real and personal property within the city as the same shall be ascertained by the assessor of Mercer county.

Sec. 65. The board of affairs shall have authority to levy and collect an annual tax on real estate and personal property in said city, and to impose a license and assess a tax thereon on wheeled vehicles for public hire and for all dogs kept within said city, and to impose a tax upon all other subjects of taxation under the several laws of the state, which taxes shall be uniform with respect to persons and property within the jurisdiction of said city, and shall only be levied on such property, real, personal and mixed, and on capital on which the state imposes a tax; *provided*, that no greater levy shall be laid by said board of affairs on the taxable property of said city than is permitted to be laid under any state law relating to municipalities. There shall be a tax of one dollar annually assessed on each and every male inhabitant of said city over the age of twenty-one years who is subject to a capitation tax under the laws of the state of West Virginia. The same shall be set out and included in the personal property book against every such inhabitant, and shall be collected under the authority of the board of affairs at the time of collecting other levies and taxes.

Sec. 66. The taxes levied by the board of affairs for the use of the city shall become due at the same time as taxes levied for the use of the county of Mercer, and the treasurer of said city, or such other person as the board of affairs may direct, shall collect the same at the same time and in the same manner as taxes are collected by the sheriff of Mercer county for county purposes, and the same discount shall be allowed to those paying taxes to the city and the same penalties added as in the case of taxes collected by

the sheriff of Mercer county, it being the intention of this act to make the collection of taxes levied for the purposes of the city uniform in all respects with the collection of taxes for county purposes, and the treasurer of said city, or such other person as may be designated by the board of affairs for the collection of taxes, is hereby clothed with all the power within the said city for the purposes of collecting city taxes, that is now possessed by the sheriff of Mercer county for the collection of county taxes.

The treasurer or collector, on the first Monday in June next succeeding the year for which such taxes were assessed, shall make out and return to the board of affairs two alphabetical lists, one a list of real estate, and the other a list of persons and property other than real estate, in the city delinquent for the non-payment of taxes thereon for such year, and shall subscribe an oath to each list in form and effect as sheriffs are required to make to delinquent lists returned to county courts, and the board of affairs shall not give the treasurer or collector credit for any uncollected taxes unless the same have been abated as prescribed herein or are mentioned in such lists. If any real estate within said city be returned delinquent for the non-payment of the taxes thereon and such return shall be made by the treasurer or collector thereof, in the manner aforesaid, a copy of such delinquent list shall be certified by the board of affairs to the auditor of the state, and the same shall be sold for taxes, interest, and commissions thereon in the same manner and at the same time and by the same officer as real estate is sold for the non-payment of state and county taxes. A copy of said delinquent list, within ten days after it has been certified by the board of affairs, shall be filed in the office of the clerk of the county court of Mercer county, and recorded in a well bound permanent book, to be furnished by the city, and kept and preserved in said office for that purpose.

*Provided, however,* that a copy of each of said lists shall be posted at the front door of the city hall of said city at least two weeks before said lists are returned to the board of affairs. And a copy of said lists shall at the same time be printed for one time in two newspapers of opposite politics, if such there be in said city; provided such newspapers will publish the same at a cost not exceeding five cents to each newspaper for each person and his delinquencies, the cost thereof to be paid out of the city treasury.

Sec. 67. The sergeant shall have the power to collect the city

taxes except as otherwise provided in this act, and he shall also have power to collect city claims which may be placed in his hands by the board of affairs for collection, and to execute, within the city any process which might be executed by the sheriff of Mercer county.

Sec. 68. All goods and chattels belonging to a person, firm, corporation or estate, assessed with any city taxes, whether the same be a capitation tax or a tax upon real or personal property or an assessment for paving or other improvements, shall be liable for said tax, and any may be distrained therefor in whosoever possession they may be found, and the sergeant shall have the same power to collect said taxes or assessment from any person owing a debt to or having in his possession any estate belonging to a person assessed with any tax or assessment of any kind that the sheriff has to collect state taxes in such cases. The sergeant may distrain and sell for all city taxes and assessments and in all respects have the same power to enforce the collection thereof as the sheriff has to enforce the collection of state taxes.

Sec. 69. There shall be a lien upon all real estate within said city for the city taxes assessed thereon, including such penalties added thereto for non-payment thereof as are prescribed by this act, from the first day of January of the year in which said taxes are assessed. Said liens may be enforced by appropriate suit in any court of record within Mercer county; *provided*, such suit be instituted within five years from the time the said liens attached as herein provided, and such suit may either be instituted by and in the name of the city of Bluefield as plaintiff, or said city may intervene by petition in any suit pending to sell or enforce liens against any real estate which is subject to such lien for said taxes. The liens herein created shall have priority over all other liens except those for taxes due the state.

Sec. 70. Said liens for city taxes and attendant penalties may also be enforced by certifying the same to the clerk of the county court of Mercer county for certification to the state auditor, and the same may be certified down by said auditor, and sold for the taxes, interest, penalties and commissions thereon, in the same manner, at the same time, and by the same officer as real estate is sold for the taxes, interest, damages, costs and commissions due the state thereon, which officer shall account therefor on settlement with the council, and pay over same to the treasurer of the city.

Sec. 71. No taxes or levies shall be assessed upon or collected from the taxable persons or property within the corporate limits of said city, for the construction, improvement or keeping in repair of roads, or for the support of the poor of Mercer county, outside of said corporate limits, for any year in which it shall appear that said city shall at its own expense provide for its own poor and keep its own roads, streets and bridges in good order. And neither the county court of Mercer county nor the authorities of the districts in which said city is situated, shall have or exercise jurisdiction within the corporate limits with relation to the roads, streets, alleys or bridges, but the same shall be and remain under the exclusive jurisdiction and control of the municipal authorities of said city; and said city shall be liable only for the construction, improvement, repair and good order of the roads, streets, alleys and bridges in its corporate limits.

#### ARTICLE XVIII.

##### *Depositing City Funds.*

Sec. 72. It shall be the duty of the treasurer of the city to keep all funds of the city in some bank or banks within said city which shall pay interest on such deposit and which shall pay interest on the average daily balance of such funds in all accounts of the per cent equal to that paid by state depositories on all funds of the state of West Virginia and in the same manner and at the same time. If no bank within said city is willing at any time to receive deposits of the treasurer and to pay such interest thereon, the treasurer shall report the fact to the board of affairs, who shall thereupon designate a bank or banks in which he shall deposit said funds for the time being until some bank in said city will receive such deposits on such terms. Before receiving any such deposits such bank or banks shall give bond in such penalty as the board of affairs shall prescribe and with sureties to be approved by said board of affairs conditioned for the prompt payment whenever lawfully required of all the city moneys or parts thereof which may be deposited with them which bonds shall be renewed at such times as the board of affairs may require.

#### ARTICLE XIX.

##### *Paving and Sewers.*

Sec. 73. The board of affairs of the city of Bluefield, by the

concurrence of three of its members, may order any street or alley or any part of any street or alley, to be paved or macadamized between the sidewalks with some suitable material, and a sewer to be constructed therein, or to have such paving done without the construction of a sewer, or a sewer constructed without such paving being done, under such regulations as may be prescribed by ordinance, upon the lowest and best terms to be obtained by advertisements for bids therefor by the board of affairs. And two-thirds of the cost of such paving shall be paid for by the abutting property owners, and the whole cost of such sewer shall be paid for by the said city. Two-thirds of the cost of such paving shall be assessed against the lots or the fractional parts of lots and the owners thereof abutting or abounding that part of the street or alley so paved in proportion to the length of frontage owned by each. One-third of such assessment shall be paid within thirty days from the completion of the work and the remainder in two equal installments in sixty and ninety days, respectively, from the completion of such work; the other one-third of the cost of such paving shall be borne by the city. The intersection of streets or of a street and alley paved under this section shall be correspondingly paved at the sole expense of the city.

It is *further provided*, that it shall be the duty of the said board of affairs, upon a petition of a majority of the property owners abutting on any street or alley or any block between any street or alley, to have the same paved on the same terms and conditions as hereinbefore provided for in this section. The assessments made for the paving as aforesaid shall be a lien on the lots or parts of lots upon which they are assessed, which lien may be enforced by a suit in equity in the name of the city, in any court having jurisdiction thereof, may be recovered in an action at law before any justice or in any court having jurisdiction.

Upon completion and acceptance of any paving contract constructed by virtue thereof, the board of affairs shall direct the auditor to immediately cause to be published a notice which shall name and describe the location of the streets or alleys upon which said paving shall be constructed, give the name or names of the owners of each lot abutting or abounding on such street or alley, if known, and if the name or names of the owner or owners of any lot or part of a lot are unknown, such lot shall be described with reasonable certainty for identification, and the fact that the name or



names of the owner or owners are unknown shall also be stated; the number of feet that each lot or fractional part of a lot abuts on such street or alley shall be stated as well as the amount assessed against each lot or part of a lot.

Said notice shall require all the owners of lots abutting on the street or alley aforesaid to appear before the board of affairs at a meeting thereof, within thirty days from the first publication of such notice, and show cause, if any they can, why said assessment should not become final, which notice shall be published once a week for two successive weeks in some newspaper published in said city. The board of affairs, upon the request of any one or more owners of said lots or parts of lots, shall appoint a day to hear grievances of said owner or owners, and they may alter or amend any assessment made against any such lot or lots or the owner or owners for good cause which may be shown therefor. The auditor shall give notice to all persons claiming to be injured by said assessment, of the time and place for holding said meeting, which shall be held within ten days after the expiration of the thirty days mentioned in the published notice above provided for. The hearing may be adjourned from time to time. In case any of the owners of such lots shall fail to appear before the board for the purpose of having such assessment corrected within the time aforesaid, the said assessment against such owner or owners shall become final. The findings of the said board shall be conclusive and final. The rights conferred by this section are cumulative and shall not be exhausted as to any particular street or alley by reason of having been once exercised.

The lien upon any real estate created by virtue of this section shall be void as to any purchaser of any such real estate, for value and without notice, who shall have purchased such real estate at any time after a period of twelve months has elapsed after the paying has been accepted by the city, unless an abstract of such assessment, giving the location of the real estate affected, the name of the owner or owners thereof and the date and amount of the assessment shall have been first recorded in the office of the clerk of the county court of Mercer county, in a well bound book to be furnished by the city for the purpose and preserved in said office, and it is hereby made the duty of the said county clerk to record such abstracts, the said clerk to be paid a fee of twenty-five cents by the said city.

Sec. 74. The board of affairs shall have the authority to regulate by ordinance, the manner in which connections are to be made with the sewers of the said city by the owners of property therein and shall have the authority to compel the owners of any property abutting upon a street or alley, in which there is a sewer, to connect their pipes therewith under the regulations prescribed by the board of affairs, and may charge such person or persons a reasonable amount therefor, to be fixed by the board of affairs by ordinance; and in case of the failure of the owner of any such property to so connect his sewer pipe with any such sewer when required, the board of affairs may provide by ordinance such fines and penalties as in its discretion may be necessary to effect a compliance with its regulations. The amount fixed by the board of affairs for the connection with such sewer shall be paid by the owner in advance of such connection and shall be paid into the city treasury to the credit of the fund to be used for sewers and shall be used for no other purpose.

#### ARTICLE XX.

##### *Refunding Bonded Indebtedness, Etc.*

Sec. 75. The board of affairs may refund the lawful bonded indebtedness of said city by issuing bonds of the city, payable within twenty years, bearing no greater rate of interest than five per cent, but the indebtedness of the city shall not thereby be increased without the consent of the voters of said city being first had and obtained as provided by law.

Such bonds shall not be sold for less than par nor exchanged for the evidence of said indebtedness of said city, except dollar for dollar, and there shall be provided a sinking fund that will discharge said bonds as they shall become due. Said bonds shall express on their face that they may be paid at any time after five years at the pleasure of the city. A record shall be kept of all proceedings hereunder; *provided*, that nothing herein contained shall be construed to authorize an increase of the bonded indebtedness of said city beyond the amount now authorized by law.

#### ARTICLE XXI.

##### *Hospitals, Libraries, Etc.*

Sec. 76. The board of affairs shall have the authority to erect, buy, sell and lease all buildings necessary for the use of the city

government and to provide for and regulate the same, and to establish and maintain public hospitals, libraries and reading rooms and to purchase books, papers and manuscripts therefor, and to receive donations, gifts, or bequests for the same in trust or otherwise.

## ARTICLE XXII.

### *Civil Service Board.*

Sec. 77. For the purpose of making examinations of persons for offices or positions in the police and fire department, and prescribing rules for their conduct, the members of the board of affairs shall act and be known as a civil service board, the mayor being the presiding officer, and the recorder *ex officio* clerk of said board.

The civil service board shall adopt rules for its own government, and cause the minutes of its meetings to be recorded in a book especially for that purpose, which shall be kept by the auditor at his office, and open to public inspection. The civil service board shall at least every six months in each year, and oftener if it deems it necessary, after ten days' notice to the public, published in two daily newspapers of opposite politics, giving the time and place of meeting, hold examinations for the purpose of determining the fitness and qualifications of applicants for offices and positions in the police department and fire department, which examinations shall be practical and shall fairly test the fitness of the persons examined to discharge the duties of the position to which they seek appointment; and such examinations and the declaration of the result thereof, shall be made with the aim to secure and maintain an honest and efficient police force and fire department force, free from partisan distinction or control. Said board shall at once after each of such examinations place on record in the journal of the civil service board, the results of said examination, giving the names of applicants and their politics, and the position sought by them, and their respective percentage based on one hundred. In making such examinations the size, intelligence, health, physical appearance, habits, and moral surroundings shall be taken into consideration.

Sec. 78. The members of the fire department and the police department now in office in the city of Bluefield shall remain in office during good behavior.

All persons examined by said civil service board receiving a gen-

eral average of seventy per cent. shall be placed upon an eligible list under separate columns of opposite politics; and hereafter and until such a time as not more than one half of the members of either department shall belong to one political party, all appointments, whether original or to fill vacancies therein from time to time shall be filled from the party casting the next highest number of votes for its candidate for mayor at the election held on the first Tuesday in May, one thousand nine hundred and eight, and the board shall continue to make such original appointments and to fill such vacancies from the eligible applicants belonging to said minority party, until the number of men in each of said departments belonging to opposite dominant political parties shall be equal or within one of equal if there be a nodd number on the department, and, after the number of members belonging to each party shall be equal, then all vacancies thereafter occurring shall be filled by the board, by the appointment of the applicant who has the highest standing on the eligible list and is an adherent of the political party to which the person belonged whose death, resignation or removal caused the vacancy. *Provided*, if at the time any appointment is to be made from the eligible list, the civil service board, in its discretion, may make another exarniation of such person before making the appointment, and may on such examination change the grade of such applicant for good cause. And, in event of the board making an original appointment it shall be the duty of the board to select the applicant having the highest standing on the eligible list, at all times giving due consideration to the intent and spirit of this act, that the numbers of men in the police and fire departments belonging to the opposite and dominant political parties shall be equal.

In the event the number of men in either department is not susceptible of being divided by two, then in the event of a vacancy the odd man shall be selected from the political party to which the then mayor belongs.

Sec. 79. No member of the police or fire department shall actively engage in any primary election, convention or election in which any officer in the city, county or state be nominated or elected, nor shall any such member, directly or indirectly, give or offer to give, contribute or offer to contribute, any money or thing of value or profit to any political committee or party organization to

be expended in behalf of any political party, nor to any candidate or candidates for nomination for or election to any office in the city, county or state. The violation of any of the provisions of this section by any member of the police or fire department, shall be deemed misconduct in office, and any member of the police or fire department may be dismissed from the service of the city in the manner and form as prescribed in the next succeeding section for the violation of any of the provisions of this section shall not be eligible to reappointment to any appointive office in the city.

Sec. 80. All persons now members of or hereafter appointed to a position in the police department and the fire department, under this or any previous act, shall hold their offices or positions during good behavior, and shall not be removed from their said offices or positions except for misconduct or a failure to perform their duties; *provided*, that by the unanimous vote of the board of affairs any such person may be removed from his said office or position for the good of the service.

The board of affairs shall hear and determine all charges against any officer of, or person holding a position in the police department and the fire department, after ten days' written notice to the accused of the charges preferred against him, and of the time and place of a hearing of said charge, and an opportunity to the accused to have been heard, at such meeting, in his defense. After thus hearing said charges the board may, by a vote of three of its members, sustain the same, and by like vote may reprimand or suspend or dismiss said accused person from the service of the city. Upon the making of such charges, and pending trial thereon, the board, by a majority vote, or the mayor when the provocation is great, may suspend the accused officer, and if he be thereafter found guilty on the charges preferred, and by reason thereof dismissed or suspended, he shall draw no salary during the period of either of his suspensions.

### ARTICLE XXIII.

#### *Non-Partisan Administration.*

Sec. 81. The object and aim of this act is to procure an honest and efficient administration of the affairs of the city of Bluefield, free from partisan distinction or control; and the municipal

authorities of the city and courts of the state, shall construe this act with that aim in view.

#### ARTICLE XXIV.

##### *Serving Notice.*

Sec. 82. Whenever any notice is required to be given, or any summons, warrant or other process is required to be served or otherwise executed, under the provisions of this act, it shall be sufficient if such notice, summons, warrant, or other process be executed by an officer of the police department of said city in the same way or manner in which the laws of the state prescribe for executing summonses and subpoenas by state officers, unless otherwise provided by this act.

#### ARTICLE XXV.

##### *Board of Affairs Successors to Council.*

Sec. 83. The board of affairs (together with the council) provided for in this act, and their successors in office, shall be held and deemed, in law and in fact, the successors of the mayor, board of supervisors and council of the city of Bluefield.

#### ARTICLE XXVI.

##### *First Election and Present Officers.*

Sec. 84. The first election hereunder shall be held on the first Tuesday in May, one thousand nine hundred and nine, and the officers then elected shall begin their terms on the first day of June, one thousand nine hundred and nine, and thereafter all elections, except special elections, shall be held on the first Tuesday of May, in every second year thereafter; and the terms of office of the persons elected shall begin on the first day of June next after such election. For the first election to be held hereunder, the council now in office shall be a canvassing board to ascertain and disclose the result of said election, to determine and settle ties as herein provided for, and hear and determine all contests. Thereafter the board of affairs shall act as such canvassing board, with all the powers heretofore vested in the council for that purpose; but the council shall have the right to be present and hear and see the canvass of the result of any election; and for this purpose it may assemble in special session on the day fixed by law to canvass the result of any election; and all the powers concerning elections, the

appointment of registrars and election officers, heretofore given to the council or which may hereafter be given to council by general law, are hereby vested in the board of affairs; and whenever one or more members of the board of affairs shall be a candidate for reelection, it shall be the duty of the council to meet and appoint some person or persons, qualified to act on the board of affairs, in the appointment of election officers and in canvassing and disclosing the result of any election and in hearing contested election matters and cases, in the place and stead of such member or members so being candidates, such person or persons so appointed shall be, in each case a member or members of the same party as the person or persons respectively candidates and in whose place he or they are so appointed; and every person so appointed shall take the oath of office required by section twenty-six before discharging his duties; and in all matters concerning said election thereafter, and the canvassing and disclosing the result thereof and the hearing of contests in relation thereto, such person or persons so appointed shall act in the place and stead of such member or members, so being candidates, and it shall be unlawful for any member of the board of affairs to act as such in any capacity in the appointment of election officers or in ascertaining and declaring the result thereof or in hearing any contest in relation thereto, when such member is a candidate at such election; and anyone violating this section shall be deemed ineligible to the office for which he is a candidate; and if upon application to the board of affairs by any five taxpayers, it fails to disclose such ineligibility, then the council shall have power so to do, and if the council shall fail to do so, then the circuit court of Mercer county shall have power so to do by *mandamus*, prohibition or *certiorari*.

Sec. 85. The auditor, acting under state laws in so far as they are not in conflict with this act, shall perform such duties relating to all municipal elections held under the municipal authority of said city, as the clerk of the county court of Mercer county performs, under state laws, in relation to state, county and district elections in said county; and he shall likewise be the custodian of all ballots, tally sheets, etc., pertaining to all municipal elections.

#### *Existing Officers and Ordinances.*

Sec. 86. The mayor, board of affairs, council and all other officers, agents and employees of the city of Bluefield, shall remain in and hold their offices and discharge the duties thereof until the

first day of June, one thousand nine hundred and nine, and thereafter until their successors are elected and qualified, as provided by this act, and all existing offices not provided for by this act, shall be abolished as of the first day of June, one thousand nine hundred and nine, except the present treasurer shall hold his office for the term for which he was elected and the present recorder shall hold the office and perform the duties of police judge under this charter from the first day of June, one thousand nine hundred and nine, until the first day of June, one thousand nine hundred and ten, the time for which he was elected recorder, and their immediate successors shall be appointed for one year and thereafter such offices shall be appointed for the regular term of two years; and further this section shall not apply to councilmen elected on the first Tuesday of May, one thousand nine hundred and eight, and those appointed to fill their vacancies, holding over as hereinbefore provided for and firemen and policemen who shall hold their offices during good behavior, and shall not be removed from their offices or positions, except as provided in this act.

All valid ordinances and regulations passed and adopted by the council, on or before the first day of April, one thousand nine hundred and nine, and not inconsistent with this act, shall be and remain in full force unless and until repealed, and the council now in office shall continue to exercise its powers as such until the first day of June, one thousand nine hundred and nine, and until the officers elected in one thousand nine hundred and nine shall be qualified.

Sec. 87. All the provisions of general law governing the issuance and sale of bonds by municipalities and the investment of sinking funds shall be applicable to the issuance and sale of bonds and the investment of sinking funds by said city of Bluefield, except as herein otherwise provided. All the provisions of general law governing the levying and collecting of taxes for the use and benefit of municipal corporations shall be enforced and applied by the board of affairs in the levying and collecting of taxes for the use and benefit of said city of Bluefield, except as herein otherwise provided, and the provisions of general law requiring the making and publishing of estimates of expenditure in advance of the laying of levies therefor, and limiting the amount of such levies shall be enforced and complied with by the board of affairs of said city.

Sec. 88. The accounts of the city shall in the month of January of each year, be audited by some expert accountant, who shall, while so engaged, be under the supervision of the board of affairs,



and the result of said accounting shall be certified to the board, and the same published with the annual statement of the city's accounts.

Sec. 89. All acts in conflict or inconsistent with this act, are, to the extent of any such conflict, hereby repealed.

(Senate Bill No. 162.)

## CHAPTER 2.

AN ACT to amend and re-enact chapter three of the acts of the legislature of West Virginia, session one thousand nine hundred and seven, granting a charter to the city of Charleston.

(Passed February 23, 1909. In effect from passage.)

1. City of Charleston; body politic and corporate; corporate name; to have common seal; powers.
2. Corporate territorial limits and boundaries.
3. Wards; boundaries.
4. Municipal authorities; how constituted and named.
5. Additional authorities; how appointed; salaries; duties.
6. Board of affairs.
7. Corporate powers vested in board of affairs.
8. Registration and qualification of voters.
9. Provision for registration of voters.
10. Nomination of candidates for members board of affairs and members of council.
11. Nominations to fill vacancies on board of affairs.
12. Nominees for board of affairs to file under oath statement of political party to which allegiance is claimed; penalty for failure.
13. Council of The City of Charleston.
14. Eligibility to office of council; present councilmen to serve until May 1, 1911; provision for first election; for election of 1911 and thereafter; council as canvassing board to decide ties; who declared elected; political requirement.
15. Election of president of council; filling vacancy in office.
16. Recorder *ex officio* clerk of council; duties.
17. New and old members supercede former council.
18. Powers of council; relation to board of affairs.
19. Right of council to hear and act on charges against members board of affairs.
20. Cause for removal from office members board of affairs.
21. Council to make rules for its government not inconsistent with authority vested in board of affairs.
22. Regular meetings of the council.
23. Notice required for special meetings.
24. Election and duties of board of affairs and officers; first and succeeding elections; number of members; vacancies; how filled; circuit court jurisdiction to restrain violations.
25. Contested elections.
26. Oaths of elective and appointive officers.
27. Official bond of elective and appointive officers; board of affairs may require additional bond.
28. Divisions of city government; department commissioners.
29. Commissioners to maintain public offices; duties defined by board of affairs.
30. Public meetings of board of affairs.
31. Special meetings; how called.
32. Majority constitutes quorum.
33. Vote; how taken.
34. Minutes of meetings; how kept.
35. Members board of affairs ineligible to other offices.
36. Appointive officers ineligible to other office; term of appointive offices.
37. Contracts for and purchase of supplies; anticipating future levies.
38. Awarding of contracts; appropriation of moneys.
39. Eligibility to hold position; office or appointment; salaries members board of affairs.
40. Misappropriation of city's funds; penalty; payment of just obligations.
41. Special election for filling vacancies.
42. Filling vacancies by appointment; oath of office required.
43. Power to enforce attendance of witnesses.
44. Absence from city or illness of members and officers; how filled.
45. Mayor; how chosen; term of office at first and succeeding elections; filling vacancies in office.

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| <p>46. Granting franchises; time limit; approval by council.</p> <p>47. Application for franchise.</p> <p>48. Modification of provisions of franchise.</p> <p>49. Ordinances or licenses to sell spirituous liquors.</p> <p>50. Committees of council; authority to perform duties; power of council in license ordinances granted by board of affairs.</p> <p>51. Publication of notice to present franchise.</p> <p>52. Style of ordinance enacted by board of affairs.</p> <p>53. Passage of ordinances.</p> <p>54. Vetoes by council of licenses and ordinances; keeping of records.</p> <p>55. Publication of ordinances imposing penalties, fines or assessments.</p> <p>56. Compliance with statute on approval of work.</p> <p>57. Police judge and other officers; authority and powers; duties.</p> <p>58. Ineligibility of police judge to practice in certain courts.</p> <p>59. Licenses; for what granted; fixing amounts; restriction of power of county court in granting; penalty for carrying on business without; police jurisdiction.</p> <p>60. Revocation of license; what for.</p> <p>61. Nuisances; powers to abate and remove.</p> <p>62. Owners of property or tenants required to connect same with sewerage system.</p> <p>63. Sidewalks; construction of; how paid.</p> <p>64. Taxes; laying of levy; authority of board of affairs to levy and collect; method of collecting; property liable for taxes; power to distrain and sell; lien upon real estate for collection of taxes thereon; enforcement of lien; property exempt from taxation.</p> <p>71. Depositing of city funds in bank or banks.</p> <p>72. Paving of streets and construction of sewers; power to issue bonds in payment.</p> <p>73. Letting of contracts by bid; assessment of property owners.</p> | <p>75. Sewerage assessment.</p> <p>76. Necessity of improvement declared by resolution.</p> <p>77. Notice of resolution to be served on property owners.</p> <p>78. Payment of costs of paving intersections.</p> <p>79. Levying of additional taxes to pay bonds.</p> <p>80. Ordinance necessary prior to proceeding with improvements.</p> <p>81. Special assessments valid and binding upon property so assessed.</p> <p>82. Concurrence of members board of affairs necessary to public improvement.</p> <p>83. Payment of assessment when improvement passes through or by public property.</p> <p>84. Cost of improvement to include cost and expense of assessment.</p> <p>85. Suits for damages arising from improvements.</p> <p>86. Proceedings to secure speedy completion of work and speedy collection of taxes.</p> <p>87. Issuance of bonds; provision for election.</p> <p>88. Refunding of lawful bonded indebtedness.</p> <p>89. Hospitals, libraries, reading rooms; regulation and maintenance.</p> <p>90. Board of affairs a civil service board; governing rules.</p> <p>91. Fire and police departments.</p> <p>92. Misconduct of members of fire and police departments.</p> <p>93. Civil service in fire and police departments; charges against officers.</p> <p>94. Non-partisan administration.</p> <p>95. Serving of notices and processes.</p> <p>96. Board of affairs successors to council.</p> <p>97. First and succeeding elections; present city officers; canvassing board; oath of office.</p> <p>98. Recorder acting under state laws in performance of duties.</p> <p>99. Existing officers; their successors; existing ordinances in effect until repealed.</p> <p>100. Inconsistent acts repealed.</p> |
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*Be it enacted by the Legislature of West Virginia:*

That chapter three of the acts of the legislature of West Virginia, session of one thousand nine hundred and seven, granting a charter to the city of Charleston, be and the same is hereby amended and re-enacted, to read as follows.

ARTICLE I.

*The City of Charleston.*

Sec. 1. The inhabitants of all that part of the county of Kanawha included and centered within the limits hereafter prescribed

in article II is hereby made a city corporate and body politic by the name of "The City of Charleston," and as such shall have perpetual succession and a common seal, and by that name may sue and be sued, implead and be impleaded, and may purchase, hold, lease or sell real estate and personal property necessary to the discharge of its corporate duties, or needful or convenient for the good order, government and welfare of said corporation.

## ARTICLE II.

### *Corporation Limits.*

Sec. 2. The corporate territorial limits of the city of Charleston shall comprise all that district of country situated in the county of Kanawha and state of West Virginia, to-wit: Beginning at the lower or west property line of Patrick street at its intersection with the Kanawha river at low water mark; thence following the property lines on the west side of said street north-east to a point on the north-east side of the Charleston and Point Pleasant turnpike, common corner to Littlepage and Gardner lands; thence with the line dividing the land of Littlepage and Gardner up the hill six hundred feet from the north-east side of Charleston and Point Pleasant turnpike to a stake; thence with a straight line in an easterly direction to a stake at the extreme northern end of Carr street; thence with a straight line in an easterly direction to Magazine road, or Magazine branch, at a point on the south-eastern corner of a lot belonging to W. A. Hoffman; thence with a line of same across Magazine road up the hill fifty feet to a stake; thence in a southerly direction parallel with Magazine road fifty feet from the east side of said road to a point within two hundred feet of the Crescent road; thence in a line two hundred feet distant and parallel with the Crescent road to Gill hollow; thence with the Gill hollow with a line extended across the Elk river to low water mark on the east side thereof; thence down said Elk river at low water mark to a point in the center of Coal branch; thence in a line up the hill to the rear of the Capitol hill property as shown on the map of same and recorded in the office of the clerk of the county court of Kanawha county; thence with a line so as to include that part of Spring Hill cemetery now under fence and with the old Scrugg's line to the line of the Wall's property; thence by a line to a point in Ruffner hollow two hundred feet from Piedmont road; thence in an easterly direction parallel with the Piedmont road and two

hundred feet north-east of same to the center of the branch in Wilson's hollow on the center line of the culvert under the Kanawha and Michigan railroad extended; thence with said center line of said culvert extended to low water mark in the Kanawha river; thence with a low water mark of Kanawha river to a point opposite Porter's hollow; thence across said river to the mouth of said hollow; thence up Porter's hollow south 53 degrees 30 minutes west 427.6 feet; south 47 degrees west 200 feet; north 73 degrees west 215 feet; south 84 degrees 30 minutes west 490 feet; south 47 degrees west 475 feet; south 23 degrees 30 minutes west 500 feet; south 49 degrees 9 minutes west 185 feet; 23 degrees, 30 minutes west, 165 feet; south 56 degrees west 200 feet; south 75 degrees 30 minutes west 230 feet; north 59 degrees 30 minutes west 322 feet; north 78 degrees .09 minutes west 151 feet; north 89 degrees 30 minutes west 174.9 feet; north 69 degrees 45 minutes west 416 feet; north 74 degrees west 1005 feet; north 85 degrees west 340 feet; south 88 degrees west 510 feet; south 44 degrees 30 minutes west 279 feet; south 50 degrees west 260 feet; thence leaving Porter's hollow north 70 degrees west 307 1-2 feet; north 47 degrees west 94 1-2 feet; thence with line of lands of South Side Improvement Company and James Paulain north 33 degrees 30 minutes west 180 feet to the corner of said James Paulain's fence; thence north 35 degrees 30 minutes east 565 feet; north 36 degrees west 495 feet; north 4 degrees west 235 feet; north 75 degrees west 275 feet; thence with the meanders of the eastern side of the main county road north 18 degrees east 175 feet; thence leaving said road north 71 degrees 30 minutes west 649 feet; south 71 degrees 30 minutes west 138 feet; south 64 degrees 30 minutes west 200 feet, to the line on the properties of the South Side Improvement Company and Augustus Paulain, to the corner of said Paulain's fence; north 68 degrees 30 minutes west 234 feet; north 34 degrees 30 minutes west 180 feet; north 81 degrees west 130 feet; north 29 degrees 30 minutes west 195 feet; north 21 degrees west 130 feet; north 8 degrees 15 minutes east 660 feet; north 7 degrees west 264 2-5 feet; north 1 degree 30 minutes west 215 feet; north 15 degrees west 140 feet; north 7 degrees 30 minutes east 194.1 feet; north 29 degrees east 370 feet; north 31 degrees east 349.7 feet; north 18 degrees west 390 feet; north 37 degrees 30 minutes west 280 feet; north 40 degrees 30 minutes west 200 feet; north 30 degrees 30 minutes east 315 feet; north 1 degree 30 min-

utes east 294 feet; north 50 degrees 34 minutes east 200 feet; north 41 degrees east 781 feet; north 79 degrees east 400 feet; north 1 degree 30 minutes west 810 feet to low water mark on the said Kanawha river, at the mouth of Ferry branch; thence down the Kanawha river at low water mark on the south side of said river to a point opposite the lower or west line of said Patrick street; thence across the Kanawha river to a point opposite said line of Patrick street at low water mark on the north side of said river. to the place of beginning.

### ARTICLE III.

#### *Boundaries of Wards.*

Sec. 3. The said city shall be divided into ten wards, the boundaries of which shall be as follows:

*First Ward*—To include that territory lying between the lower or western corporation line, the center of Park avenue of Glenwood addition, extended to the corporate line, north-east of Charleston and Point Pleasant turnpike, and to low water mark in the Kanawha river.

*Second Ward*—To include that territory east of the eastern line of the First Ward as above described to center of Elk river and between Kanawha river and the center of Hale street, formerly in Elk City, extended to corporation line.

*Third Ward*—Remainder of territory west of the center of Elk river and east or north-east of center of said Hale street so extended.

*Fourth Ward*—That territory east of the center of Elk river to center of Court street, and between center of Donnally street and Kanawha river at low water mark.

*Fifth Ward*—That territory lying between the center of Court street, center of Donnally street, center of Elk river, center of Summers street, extended to corporation line and Summers and Court streets extended to low water mark in Kanawha river.

*Sixth Ward*—That territory lying between the center of Summers street, extended to corporation line and center of Broad street, extended to corporation line and both extended to low water mark in Kanawha river.

*Seventh Ward*—That territory between center of Broad street and center of Morris street, both extended to corporation line on hill and low water mark in Kanawha river.

*Eighth Ward*—That territory between center of Morris street and center of Ruffner avenue, both extended to corporation line on hill and low water mark in Kanawha river.

*Ninth Ward*—Remainder of the territory east of the center line of Ruffner avenue, extended to corporation line on hill and low water mark in Kanawha river.

*Tenth Ward*—All of said territory south of said low water mark on the north side of said Kanawha river.

#### ARTICLE IV.

##### *Municipal Authorities.*

Sec. 4. The municipal authorities of the city of Charleston shall consist of four commissioners who shall constitute a board of affairs and be known as the "Board of Affairs of the City of Charleston," and the "Council of the City of Charleston" hereinafter provided for in article eight of this act.

Sec. 5. In addition to the municipal authorities mentioned in section four of this act, said city shall have a recorder, treasurer, auditor, police judge, city solicitor, city sergeant, chief of police, chief of fire department, city engineer, superintendent of highways, health commissioner, and such other officers and agents as the board of affairs may from time to time create or employ. The election of all appointive officers named or provided for in this section and the power to fix their salaries, shall be vested in the board of affairs unless otherwise provided. Salary of all officers to be appointed by the board of affairs shall be fixed by ordinance, and in making all appointments authorized by this act, or by any ordinance pursuant to this act it shall be the duty of the board of affairs to make such appointments in such an equitable manner between adherents of the political parties represented on said board of affairs as will make the representation as near equal in number and in salary as is practicable. No appointment of any officer shall be made, nor shall any vacancy in office be declared, without the affirmative vote of at least three members of the board of affairs. The duties, in addition to those prescribed herein, of all appointive officers named or authorized in this act shall be prescribed by the board of affairs by ordinance.

#### ARTICLE V.

##### *Corporate Powers.*

Sec. 6. All the corporate powers of said city shall be vested in

and exercised by the board of affairs, or under its authority, except as otherwise provided in this act.

Sec. 7. The board of affairs of said city shall have and are hereby granted power to have said city surveyed; to lay out, open, vacate, straighten, broaden, change grade of, grade, re-grade, curb, widen, narrow, repair, pave, and re-pave streets, alleys, roads, squares, plots, side-walks and gutters for public use, and to alter, improve, embellish and ornament and light the same, and to construct and maintain public sewers and laterals, and shall in all cases have power and authority to assess upon and collect from the property benefitted thereby such part of the expense thereof as shall be fixed by ordinance, except as hereinafter provided; to have control of all streets, avenues, roads, alleys and grounds for public use in said city, and to regulate the use thereof and driving thereon, and to have the same kept in good order and free from obstruction, pollution or litter on or over them; to have the right to control all bridges within said city, and the traffic thereover; to change the name of any street, avenue or road within said city, and regulate and cause the numbering and re-numbering of houses on any street, avenue or road therein; to regulate the naming of streets, avenues and public places; to regulate and determine the width of streets, sidewalks, roads and alleys; to order and direct the curbing, re-curbing, paving, re-paving and repairing of sidewalks and foot-ways for public use in said city to be done and kept clean and in good order by the owners of adjacent property; to enter into a contract with an internal improvement company for the joint ownership of any bridge by the city and such company, upon such terms as may be prescribed in the contract, but such bridges shall be a public highway, and the interest of the company shall be only such proportionate part thereof as it may pay for or that may be named in the contract; to prohibit and punish the abuse of animals; to restrain and punish vagrants, mendicants, beggars, tramps, prostitutes, drunken or disorderly persons within the city, and to provide for their arrest and manner of punishment; to prohibit and punish by fine the bringing into the city by steamboats, railroads or other carriers, of paupers, dangerous or objectionable characters or persons afflicted with contagious diseases; to control and suppress disorderly houses, houses of prostitution or ill fame, houses of assignation, and gaming houses or any part thereof, and to punish those engaged in gaming; to prohibit within said city or

within two miles thereof slaughter houses, soap or glue factories, and houses and places of like kind, and any other thing or business dangerous, unwholesome, unhealthy, offensive, indecent or dangerous to life, health, peace or property; to provide for the entry into and the examination of all dwellings, lots, yards, enclosures, buildings and structures, cars, boats and vehicles of every description and to ascertain their condition for health, cleanliness or safety; to regulate the building and maintenance of party walls, partition fences or lines, fire walls, fire places, chimneys, boilers, smoke stacks and stove pipes; to provide for and regulate the safe construction, inspection and repairs of all public and private buildings, bridges, basements, culverts, sewers, or other buildings or structures of any description; to take down and remove, or make safe and secure any and all buildings, walls, structures or super-structures at the expense of the owners thereof, that are or may become dangerous, or to require the owners or their agents to take down and remove them or put them in a safe and sound condition at their own expense; to regulate, restrain or prohibit the erection of wooden or other buildings within the city; to regulate the height, construction and inspection of all new buildings hereafter erected, and the alteration and repair of any buildings already erected or hereafter erected in said city, and to require permits to be obtained for such buildings and structures, and plans and specifications thereof to be first submitted to the building inspector; to regulate the limit within which it shall be lawful to erect any steps, porticos, bay windows, bow windows, show windows, awnings, signs, columns, piers, or other projection or structural ornaments of any kind for the houses or buildings fronting on any street of said city; to establish fire limits and to provide the kind of buildings and structures that may be erected therein, and to enforce all needful rules and regulations to guard against fire and danger therefrom; to require, regulate and control the construction of fire escapes, for any buildings or other structures in said city; to control the opening and construction of ditches, drains, sewers, cess-pools and gutters, and to deepen, widen and clear the same of stagnant water or filth, and to prevent obstruction therein, and to fill, close or abolish the same, and to determine at whose expense the same shall be done; and to build and maintain fire station houses; crematories, jails, lock-ups, and other buildings, police stations and police courts, and to regulate the management thereof; to acquire, establish, lay off, appropriate,



regulate, maintain, and control public grounds, squares and parks, hospitals, market houses, city buildings, libraries and other educational or charitable institutions, either within or without the city limits; and when the board of affairs determines that any real estate in or out of the city is necessary to be acquired by said city for any such purpose, or for any public purpose, or is necessary in the exercise of its powers herein granted, the power of eminent domain is hereby conferred upon said city, and it shall have the right to institute condemnation proceedings against the owner thereof in the same manner, to the same extent and upon the same conditions as such power is conferred upon public corporations by chapter forty-two of the code of West Virginia of the edition of one thousand nine hundred and six, and as now or may be hereafter amended; to purchase, sell, lease, or contract for and take care of all public buildings and structures and real estate deemed proper for the use of such city; and for the protection of the public; to cause the removal of unsafe walls, structures or buildings, and the filling of excavations; to prevent injury or annoyance to the business of individuals from any thing dangerous, offensive or unwholesome; to abate or cause to be abated all nuisances and to that end and thereabout to summon witnesses and hear testimony; to regulate or prohibit the keeping of gun powder and other combustible or dangerous articles; to regulate, restrain or prohibit the use of fire-crackers or other explosives or fire-works, and all noises or performances, which may be dangerous, indecent or annoying to persons or tend to frighten horses or other animals; to provide and maintain proper places for the burial of the dead, in or out of the city, and to regulate interments therein upon such terms and conditions as to price and otherwise, as may be determined; to provide for shade and ornamental trees, shrubbery, grass, flowers and other ornamentation, and the protection of the same; to provide for the poor of the city; to make suitable and proper regulations in regard to the use of the streets, public places, sidewalks and alleys by street cars, foot passengers, animals, vehicles, motors, automobiles, traction engines, railroad engines and cars, and to regulate the running and operation of the same so as to prevent obstruction thereon, encroachment thereto, injury, inconvenience or annoyance to the public; to prohibit prize-fighting, cock and dog fighting; to license, tax, regulate or prohibit theaters, moving pictures, circuses, the exhibition of showmen,

and shows of any kind, and the exhibition of natural or artificial curiosities, carnivals, menageries, and musical exhibitions and performances, and other things or business on which the state does or may exact a license tax; to organize and maintain fire companies and departments, and to provide necessary apparatus, engines and implements for the same, and to regulate all matters pertaining to the prevention and extinguishment of fires; and to make proper regulations for guarding against danger and damage from fires, water or other elements; to regulate and control the kind and manner of plumbing and electric wiring, air ships, balloons, wireless stations, and other appliances for the protection of the health and safety of said city; to levy taxes on persons, property and licenses; to license and tax dogs and other animals, and regulate, restrain and prohibit them and all other animals and fowls running at large; to provide revenue for the city and appropriate the same to its expenses; to adopt rules for the transaction of business for its own regulation and government; to promote the general welfare of the city and to protect the persons and property of citizens therein; to regulate and provide for the weighing of produce and other articles sold in said city and to regulate the transportation thereof, and other things, through the streets, alleys and public places; to have the right to grant, refuse or revoke any and all licenses for the carrying on of any business within said city on which the state exacts a license tax; to establish and regulate markets and to prescribe the time for holding the same, and what shall be sold in such market, and to let stalls or apartments and regulate the same and to acquire and hold property for market purposes; to regulate the placing of signs, bill boards, posters and advertisements in, on or over the streets, alleys, side-walks and public grounds of said city; to preserve and protect the peace, order and safety and health of the city and its inhabitants, including the right to regulate the sale and use of cocaine, morphine, opium and poisonous or dangerous drugs; to appoint and fix the places of holding city elections; to erect, own, lease, authorize or prohibit the erection of gas works, electric light works or water works, ferry boats, in or near the city, and to operate the same, and sell the products or services thereon, and to do any and all things necessary and incidental to the conduct of such business; to build, hold, purchase, own and operate toll bridges; to provide for the purity of water, milk, meats and provisions offered for sale in said city, and to that

end provide for a system of inspecting the same and making and enforcing rules for the regulation of their sale, and to prohibit the sale of any unwholesome or tainted milk, meats, fish, fruit, vegetables, or the sale of milk, containing water or other things not constituting a part of pure milk; to provide for inspecting dairies and slaughter houses, whether in or outside of the city, where the milk and meat therefrom are offered for sale within said city, and to prohibit the sale of any article deemed unwholesome, and to condemn the same or destroy or abate it as a nuisance; to provide for the regulation of public processions so as to prevent interference with public traffic, and to promote the good order of the city; to prescribe and enforce ordinances and rules for the purpose of protecting the health, property, lives, decency, morality, cleanliness and good order of the city and its inhabitants, and to protect places of divine worship and about the premises where held, and to punish violations of all ordinances even if the offenses under and against the same shall also constitute offense under the law of the state of West Virginia or the common law; to provide for the employment and safe keeping of persons who may be committed in default of the payment of fines, penalties, or costs under this act, who are otherwise unable or fail to discharge the same, by putting them to work for the benefit of the city upon the streets or other places in or out of the city provided by said city, and to use such means to prevent their escape while at work as the board of affairs may deem expedient; and the board of affairs may fix a reasonable rate per day as wages to be allowed such person until the fine and costs against him are thereby discharged; to compel the attendance at public meetings of the members of the board of affairs and council; to have and exercise such additional rights, privileges and powers as are granted to municipalities by chapter forty-seven of the code of West Virginia, as amended. For all such purposes, except that of taxation, and for purposes otherwise limited by this act, the board of affairs shall have jurisdiction, when necessary, for one mile beyond the corporate limits of said city, excepting within any other municipal corporation within said one mile limit.

And the board of affairs shall have the right to establish, construct and maintain public markets, landings, ferries, wharves and docks on any ground which does or shall belong to said city, or which it shall acquire, by purchase or otherwise, and to sell, lease, repair, alter, or remove any public markets, landings, ferries,

wharves, dikes, buildings or docks which have been or shall be so constructed, and to levy and collect reasonable duty on vessels and other craft coming to or using said landings, ferries, wharves, dikes, docks and buildings, and to preserve and protect the peace and good order at the same, and regulate the manner in which they shall be used; and to have the sole right, under state laws and in the same manner as now control county courts, to establish, construct, maintain, regulate and control all such wharves, docks, ferries, and landings within the corporate limits of said city.

To carry into effect these enumerated powers and all other powers conferred upon said city expressly or by implication in this and other acts of the legislature, the board of affairs of said city shall have the power, in the manner herein prescribed, to adopt and enforce all needful orders, rules and ordinances not contrary to the laws and constitution of this state; and to prescribe, impose, and enforce reasonable fines and penalties, including imprisonment, in the city lock-up, jail, or station house and to work prisoners found guilty as the board of affairs may prescribe, and market the products of such labor, and with the consent of the county court of Kanawha county entered of record, shall have the right to use the jail of said county for any purpose necessary to the administration of its affairs.

## ARTICLE VI.

### *Registration and Qualification of Voters.*

Sec. 8. Every person qualified by law to vote for members of the legislature of the state, and who shall have been a resident of said city for sixty days preceding the day of election of the ward in which he offers to vote at least ten days and a *bona fide* resident of the election precinct in which he offers to vote, shall be entitled to vote at all elections held in said city by or under the corporate authorities thereof.

Sec. 9. The board of affairs shall by ordinance provide for such regulations for the registration of voters as may be rendered necessary by state laws; except that at the first election hereunder the present council shall provide for such registration, and the registration already provided for, for the election to be held in the year one thousand nine hundred and nine, shall not be set aside or held illegal because of this section.

## ARTICLE VII.

*Nomination of Candidates.*

Sec. 10. Candidates to be voted for at any municipal election for members of the board of affairs and members of the council, may be nominated by convention, primary or petition in the manner and under the provisions now or hereafter prescribed by state laws relating thereto:

*Provided, however,* that for the election to be held on the third Monday in April, one thousand nine hundred and nine, no political party shall nominate more than four persons for the office of members of the board of affairs, no more than two of whom shall be from the same ward, and no more than four persons in each ward of the city for the office of members of the council, except, however, that the political party whose candidate for mayor at the city election on the third Monday in March, one thousand nine hundred and seven, received the greater number of votes, shall not nominate more than two persons in each ward of the city for the office of members of the council; and thereafter at any election to be held either for electing a member of the board of affairs, or to the council, no political party shall nominate more than double the number to be elected to any office. If any certificate of nomination, or any petition for nomination of candidates for either the board of affairs or the council, shall contain more names than prescribed in this section for such office, then the ballot commissioners shall, for the first election to be held under this act, take the first four names for board of affairs as the nominees of such party for said offices, and said ballot commissioners shall take the first two names as nominees for council in each ward of the city of the political party casting the larger number of votes for its mayor at the election held in the city on the third Monday in March, one thousand nine hundred and seven, and the first four names as nominees for council in each ward of the city, of the other parties and of the names on other petitions; at any subsequent regular city election held hereunder, the ballot commissioners shall take the first two names for board of affairs, and the first two names for each party and petition and from each ward of the city, for council, as the nominees of such party for said office. And, *provided, further,* that there shall not be printed on any ticket on any ballot to be voted at any municipal election for the election of officers of the city,

more names for the office of members of the board of affairs and council than provided for in this section.

Sec. 11. In case of the nomination of candidates to be voted for to fill the vacancies on the board of affairs, no political party and no petition shall nominate more than double the number to be elected, and such nominations shall be certified, and the names of the nominees printed on the ballot, in the manner prescribed in the section next preceding.

Sec. 12. Every person so nominated for member of the board of affairs, shall, within five days after his nomination has been certified by the political party making the nomination, or a petition therefore shall have been filed, make, under oath, and file with the recorder a statement of the political party to which he claims allegiance, or if he belongs to no party shall so state; and, if nominated by two or more parties, he shall state to which of them he belongs. If such person fail to make the oath, and file the same, as herein prescribed, the ballot commissioners shall not place his name on the ballot to be voted at the approaching election.

## ARTICLE VIII.

### *Council.*

Sec. 13. The city of Charleston shall have a council, to be known and styled the "Council of the City of Charleston," and which shall be comprised of four persons from each ward of the city, and who shall be voted for and elected by the voters of each ward respectively, and in the manner hereinafter prescribed.

Sec. 14. No person shall be eligible to the office of council, except citizens entitled to vote at the election at which they are elected. The members of the present council of the city of Charleston, entitled under the present charter to serve until April first, one thousand nine hundred and ten, shall each be members of the council provided for herein, and entitled to serve as such till the first day of May, one thousand nine hundred and eleven, or until their successors shall be elected and qualified. At the first election hereunder only one member of the political party casting the greater number of votes at the city election held in March, one thousand nine hundred and seven, shall be elected in each ward; and two persons, not of said party, shall also be elected in each ward. And at the election of one thousand nine hundred and eleven, and thereafter, four persons shall be elected from each ward, not

more than two of whom shall belong to the same political party. At the first election hereunder, the candidate belonging to the same party casting the greater number of votes at the city election held in March, one thousand nine hundred and seven, receiving the highest number of votes for council in any ward shall be declared elected, and if more than one candidate belonging to such party receive the same number of votes the council sitting as a canvassing board shall elect one of them as councilman. At said election the two persons (not of the same political party that received the highest number of votes at the said election of March, one thousand nine hundred and seven,) who shall receive the highest number of votes for council, shall be declared elected; if more than two would be thus elected the council sitting as a canvassing board shall decide the tie. At the elections thereafter, four councilmen shall be elected from each ward, not more than two of whom shall belong to the same political party. The four persons receiving the highest number of votes shall be declared elected; but in any case where this would elect more than two persons from the same political party, then only the two from that party receiving the highest number of votes shall be declared elected, and any tie shall be determined at once by the canvassing board; and the two persons not of the same political party as the two already declared elected, and receiving the next highest number of votes, shall be declared elected, and any tie shall be determined by the canvassing board. If any person elected to the council fail to qualify as herein provided, within thirty days after his said election, or shall, after having qualified, resign from the council, or move from the city or his ward, his office shall thereby be vacated, and the council shall by a majority vote of the members voting thereon, fill such vacancy for the unexpired term with some person from the same ward and of the same political party as the person whose vacancy of office is being filled. The term of office of all councilmen hereafter elected shall be two years.

It shall be unlawful for there to be more than two councilmen from any ward at any time, belonging to the same political party, and the circuit court of Kanawha county is given the same jurisdiction to enforce this provision as is given in section twenty-four in case of members of the board of affairs.

Sec. 15. The council shall, at its first meeting after a majority

of the newly elected members thereof shall have qualified, elect one of its members president of the body, whose term of office shall run with the term of the members of the body electing him. The council shall, by a majority vote of the members voting thereon, fill any vacancy in the office of president of its body by electing another member of the council to the office of president for the unexpired term, or may elect a president *pro tempore* at any time in the absence of the president.

Sec. 16. The recorder shall be *ex officio* clerk of the council, and shall perform such duties pertaining thereto as the council may require of him.

Sec. 17. Whenever a majority of the newly elected members of the council shall have qualified, they and the old members in office shall enter upon the duties of their said offices, as a body, and supersede the former council.

#### *Powers of Council.*

Sec. 18. The council shall be a co-ordinate legislative branch of the government of the city, with the power of approval or disapproval of all ordinances, franchises and licenses, to sell spirituous liquors, wine, beer, porter, ale and drinks of like nature passed by the board of affairs.

The council or any ten members thereof shall have the right, from time to time, to demand of the board of affairs any specifications, facts, maps, plans, details, contracts, agreements, correspondence or other papers or documents affecting the city's interests or rights, and it shall be misfeasance and neglect of duty for the board of affairs to fail to comply with any such demand; and the council or any ten members thereof may likewise require reports from the board of affairs and from any officer of the city concerning any public business, thing, or matter in which the city may be interested, and it shall be misfeasance and neglect of duty for the board of affairs or any official to fail to comply with any such requirement. The council may likewise from time to time make recommendations to the board of affairs or to any officer for the city's best interests or good.

Sec. 19. The council shall have the right to hear, consider, determine and act on charges against any member of the board of affairs, and, after having heard proof of such charges, may remove such member and declare his office vacant by two-thirds vote of all



members elected to said council, and the vote thereon shall be by roll call of the members and entered of record in the minutes of the meeting. But before such member shall be put to trial on said charges, he shall have at least ten days' written notice of the nature of said charges, and the time and place of a hearing thereon before said council. If the council, after hearing of said charges, shall remove said member from office, thereby declaring a vacancy in his said office of member of the board of affairs, it shall, through its president or otherwise, cause its action thereabout to be at once certified to the board of affairs, and thereafter such member shall cease to hold his office.

Sec. 20. No member of the board of affairs shall be removed from his office except for one of the causes mentioned in section six of article IV of the constitution of West Virginia.

Sec. 21. The council shall make proper rules for its government not contrary to or inconsistent with any of the provisions of this act or the authority vested in the board of affairs; and it shall cause a record of its meetings and proceedings to be kept and recorded by its recorder in a well bound book, which shall remain in the custody and at the office of the recorder and open to public inspection. The minutes of the meeting and proceedings of said council, after recordation and when signed by its president, shall be admitted as evidence in any court of record in this state.

#### *Meetings of the Council.*

Sec. 22. The council shall meet on the first Monday of each month, at the hour and at the place to be fixed by it by the rules governing its body. The first meeting hereunder shall be called and the time fixed by the mayor not more than thirty days after the first election held hereunder, which notice shall be published in two newspapers in said city of opposite politics.

Sec. 23. Special meetings of the council may be called by its president, or any ten members thereof, or by the board of affairs, or by the mayor, by notice published in two daily newspapers of the city of opposite politics, on two successive days, stating the time and object of the meeting. The holding of a special meeting of the council shall be *prima facie* evidence that the said notice required therefor was given as prescribed in this section, and no business shall be transacted at any special meeting of the council unless specially mentioned in the call for such meeting.

## ARTICLE IX.

*Election and Duties of Board of Affairs, Officers, Etc.*

Sec. 24. At the first election held hereunder, there shall be elected four members of the board of affairs, not more than two of them shall be members of the same political party; and, according to the vote received by each, they shall be divided into two classes, and not more than one member of each class shall or can belong to the same political party. The two receiving the highest number of votes, except as herein otherwise provided, shall belong to class "A" and shall serve for four years, or until their successors are elected and qualified; and the two receiving the next highest number of votes, except as herein otherwise provided, shall belong to class "B" and shall serve for two years, or until their successors shall be elected and qualified. And, at every election thereafter there shall be elected two members who shall serve for four years or until their successors shall be elected and qualified. If at said first election hereunder, two or more persons shall receive the highest and the same number of votes, the council then in office, shall immediately elect one of them as member of the board of affairs (and mayor as provided in section forty-five) and in class "A" and then shall elect another receiving the same number of votes as member of the board of affairs, but if he be of the same political party as the first one elected, he shall be in class "B." For the second member of class "A" the council shall declare elected the person receiving the same or the next highest number of votes and not of the same political party as the other member in class "A," and for the second member of class "B" the council shall declare elected the person receiving the same or the next highest number of votes and not of the same political party as the other member of class "B," and in all cases it shall be the rule that the person receiving the highest number of votes shall be elected member of the board of affairs, and that a tie in the first election shall be decided by council, and thereafter by the canvassing board; but that council cannot and shall not declare elected to class "A" or class "B" more than one person each of the same political party, nor can it by election in a case of a tie have more than one person in any party in either of said classes and at all subsequent elections, the persons receiving the highest number of votes shall be declared elected as members of the board of affairs and mayor as provided in section forty-five; and the person receiving the next highest num-

ber of votes and not of the same political party as the one receiving the highest number of votes shall also be declared elected as member of the board of affairs, and if two or more persons receive the same and the highest number of votes, the board of affairs as a canvassing board shall elect one of them as member of the board of affairs, and the person receiving the same number of votes and not of the same political party as the first one elected, shall be declared as member of the board of affairs.

If at any election one or more vacancies in member of the board of affairs are to be filled by election, the person receiving the highest number of votes and of the same political party as the person whose vacancy is being filled shall be declared elected; and if two or more persons of the same political party receive the highest and the same number of votes to fill such vacancy, then the canvassing board shall at once elect one of such persons to fill such vacancy; but it shall be unlawful to fill any vacancy on the board of affairs with any person not of the same political party as the person whose vacancy is being filled, and it shall be unlawful, by election, appointment or otherwise, for the board of affairs, at any time, to be composed of more than two members of the same political party. The circuit court of Kanawha county shall have jurisdiction by prohibition, *mandamus*, and injunction, at the suit of not less than five taxpayers of the city to restrain and prohibit any official or governing body from violating this section and to compel and to command any official or governing body to enforce and faithfully observe the provisions of this section; and in any such proceeding such court may inquire into the politics of any person elected or appointed, so that neither by deceit, misrepresentation, false pretense, or subterfuge, the provisions of this section may be violated.

#### *Contested Elections.*

Sec. 25. All contested elections shall be heard and decided by the board of affairs for the time being, and the contest shall be made and conducted in the same manner as provided for in such contests for county and district offices; and the board of affairs shall conduct its proceedings in such cases as nearly as practicable in conformity with the proceedings of the county court in such cases, except that for the first election hereunder the council shall hear such contest.

#### *Oaths of Officers:*

Sec. 26. All officers, elective and appointive, shall make oath,

before some one authorized to administer oaths, that they will support the constitution of this state, and will faithfully and impartially discharge the duties of their respective offices to the best of their skill and judgment; that they will not administer their respective offices with the aim to benefit or injure any political party; and in the case of members of the board of affairs they shall add in their oath that they are not, will not, during their term of office become pecuniarily interested directly or indirectly, in any contract with the city, franchise or license granted by it, or the purchase of supplies therefor. When the officer shall have made such oath in writing and filed the same with the recorder and shall have given bond required of and accepted from him, he shall be considered as having qualified for the office to which he was elected or appointed; *provided*, that if any person elected as member of the board of affairs he shall not qualify for said office as herein prescribed within ten days after he shall have been officially declared elected thereto said office shall *ipso facto* become vacant, and said vacancy shall be filled in the manner provided for in this act.

#### *Bond of Officers.*

Sec. 27. Each member of the board of affairs, and the recorder, treasurer, auditor, city solicitor, city sergeant, health commissioner, chief of police, chief of fire department, shall, before entering upon the discharge of their duties, give an official bond, conditioned for the faithful performance of their respective duties as prescribed in this act or any ordinance now or hereafter passed, in amounts as follows: Each member of the board of affairs and city sergeant, five thousand dollars; the treasurer, sixty thousand dollars; the auditor, two thousand dollars; the recorder and city solicitor, three thousand dollars; health commissioner, chief of police, and chief of the fire department, each one thousand dollars.

The board of affairs may require additional bond from any of said appointive officers, and may likewise require bond, in whatever sum they may fix, of any other appointive officer. All bonds of appointive officers shall, before their acceptance, be approved by the board of affairs; and the bonds of the members of the board of affairs shall be approved by the retiring board of affairs, except that bonds of the first board of affairs shall be approved by the present council. All other bonds of whatsoever kind shall not be accepted until first approved by the board of affairs. The min-

utes of the meeting of the board shall show all matters touching the consideration or approval of all bonds, and when said bonds are approved and accepted they shall be recorded by the recorder in a well bound book kept by him at his office for that purpose, which book shall be open to public inspection; and the recordation of such bonds as aforesaid shall be *prima facie* proof of their correctness, and they, as so recorded, shall be admitted as evidence in all the courts of this state. The recorder shall be the custodian of all bonds, except those given by him, and as to them the city treasurer shall be custodian.

All bonds, obligations or other writings taken in pursuance of any provisions of this act shall be made payable to "The City of Charleston," and the respective persons, and their heirs, executors, administrators and assigns bound thereby shall be subject to the same proceedings on said bonds, obligations and other writings, for enforcing the conditions of the terms thereof, by motion or otherwise, before any court of record held in and for the county of Kanawha, that collectors of county levies and other sureties are or shall be subject to on their bonds for enforcing the payment of the county levies.

#### ARTICLE X.

##### *Departments of City Government.*

Sec. 28. In order to better dispatch the business of the city, and assign more in detail the duties of the members of the board of affairs, the government of said city is hereby divided into four departments, to-wit:

1. Department of finance, embracing the departments of finance, taxation and public utilities.
2. Department of public safety, embracing the departments of law, fire, public buildings and grounds.
3. Department of police, embracing the departments of police, health and charity.
4. Department of streets, embracing the department of streets, wharves and sewers. The mayor, at the first regular meeting of the board of affairs following their election and qualification, shall designate himself and each of the other members of the head of one of the said departments of government, and the members thus assigned shall be styled the commissioners of that department, to-wit:

1. "Commissioner of finance."
2. "Commissioner of public safety."
3. "Commissioner of police."
4. "Commissioner of streets."

And he shall have the immediate care and supervision of his department, but subject always to the control or orders of the board of affairs. The business, and the labors incident thereto, of each of the departments shall be that which properly falls within the scope of the particular department, but which, in details may be fixed from time to time by the board of affairs. The head of each department shall see to the performance of all business coming within his department, or which may be referred to, or to any officer thereunder from time to time, but no member of the board of affairs, either as a commissioner of a department or otherwise, shall employ or hire any one to do any service nor shall he make any appointment except with the consent and authority of the board of affairs. The board of affairs shall by ordinance, fix the salaries of all appointive officers which shall be subject to the approval of the council as provided in section eighteen of this act; but laborers by the day and those doing special work may be paid by the board of affairs without fixing the price by ordinance.

The commissioner of health and charity, as a part of his duties, shall establish and maintain a free employment bureau.

Sec. 29. The commissioner of each department shall keep a public office at which he may be found or communicated with during stated hours to be fixed by him or the board of affairs, unless his official duties call him elsewhere; and the board of affairs shall, by ordinance, prescribe the powers and duties of each commissioner, and of all officials, and the scope of each department.

#### *Meetings of Board of Affairs.*

Sec. 30. The board of affairs shall have at least one regular public meeting each week at some place provided for that purpose, and on a stated day and at an hour fixed by ordinance or rules governing the board.

Sec. 31. Special meetings of the board may be called by the mayor or any two members of the board by personal notice given to the other members thereof, stating the time and object of the meeting; and no business except that stated in said notice shall be considered or acted upon at said meeting. All meetings of the board shall be open to the public.

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*Quorum.*

Sec. 32. A majority of the whole number of members elected to the board of affairs and a majority of the whole number of members elected to council shall be necessary for the transaction of business before said respective bodies, but a smaller number in either body may adjourn from time to time and may compel the attendance of absent members, in such manner and under such penalties, as either body may by rules provide.

*How Vote Taken.*

Sec. 33. Unless otherwise herein provided, the vote upon any question or motion before the board of affairs may be *viva voce* when unanimous; but if the question or motion does not receive the unanimous vote of the members present, then the vote shall be taken by roll call of the members and made a part of the minutes of the meeting, and when the vote is unanimous the minutes shall so state.

*Minutes of the Meetings.*

Sec. 34. The recorder shall be *ex officio* clerk of the board of affairs. Said board shall cause detailed minutes of its meetings and proceedings to be kept by the recorder in a well bound book for that purpose, which shall remain in the custody of the recorder at his office and open to public inspection. The minutes of every regular or special meeting shall be read publicly at the next regular meeting of the board, and, after being corrected, shall be signed by the mayor and recorder, and, if thus recorded and signed, they shall be admitted as evidence in any court of record in this state. They shall read publicly all recommendations of council since the last meeting and preserve and file the same.

*Can Not Hold Any Other Office.*

Sec. 35. The members of the board of affairs shall not hold any other city office, except as prescribed in this act, nor be an employee of the city in any other capacity with a compensation, nor hold any other office, with or without compensation, which may interfere with the faithful discharge of their duties as members of the board of affairs.

Sec. 36. No appointive officer of the city shall hold two offices with the city at the same time, nor become the employee of the city in any other capacity, without first having the consent of the board of affairs. All appointive officers, except those under civil

service, shall hold for a term of two years unless sooner removed by and at the pleasure of the board of affairs, and until their successors are appointed and qualified.

*Contract and Purchase of Supplies.*

Sec. 37. The board of affairs shall purchase all of the supplies and materials for the departments of the city government at the lowest price possible considering the quality and grade of the supplies desired. *Provided*, no contract involving the payment of more than five hundred dollars shall be authorized by the board of affairs except by an ordinance passed by the board of affairs and approved by the council as provided for in article XII. No contract shall be entered into involving or anticipating future levies unless all questions connected with the same shall have been first submitted to a vote of the people and have received three-fifths of all the votes cast on the subject submitted, and the power is hereby granted the board of affairs to submit any such question and to provide by proper ordinance for taking the vote and ascertaining the result. And, whenever any such supplies or materials involve the expenditure of one hundred dollars, or more, the board shall advertise by reasonable notice in at least two daily newspapers published in the city, of opposite politics, for bids on supplies or materials to be furnished, and shall award the contract thereon (unless all bids are rejected) to the lowest bidder, taking from such bidder a written contract and bond thereon, to be approved by the board, for the faithful performance of said contract.

Sec. 38. No contract shall be awarded, nor any money appropriated for any purpose without the affirmative vote of at least three members of the board of affairs.

*Eligibility and Salaries.*

Any one entitled to vote for members of the legislature shall be eligible to any position, office or appointment hereunder.

Sec. 39. Members of the board of affairs shall each receive a salary of not less than twelve hundred dollars and not exceeding two thousand dollars per annum, but when the city shall have a population of 35,000 people such salary shall not exceed twenty-five hundred dollars each, which salaries shall be fixed by ordinance. But whenever the board of affairs shall fail to make their appointments of all appointive officers for a period of thirty days, each member shall forfeit his salary thereafter, and until such ap-



pointments shall be made, and all disbursing and accounting officers shall take official notice of such failure to make such appointments, and no order, warrant, check or draft shall be issued for such salary so forfeited.

Sec. 40. Any member of the board of affairs, or any officer connected with the city government pursuant to any law of this state, or ordinance of the city now or hereafter passed, and who shall, in his official capacity or under color of his office, knowingly or wilfully, or corruptly vote for, assent to or report in favor of, or allow, or certify for allowance, any claim or demand against the city, which claim or demand shall be on account or under color of any contract or agreement not authorized by or in pursuance of the provisions of this act or the ordinances of the city, or any claim or demand against the city which claim or demand or any part thereof shall be for work not performed for and by authority of said city, or by the board of affairs, or for the supplies or materials not actually furnished thereto pursuant to law or ordinance, and every such member or officer as aforesaid who shall knowingly vote for, assent to, assist or otherwise permit, or aid, in the disbursement or disposition of any money or property belonging to the city to any other than the specific use or purpose for which such money or property shall be or shall have been received or appropriated or collected or authorized by law to be collected, shall, upon conviction thereof, be punished by imprisonment in the county jail for not more than one year or by fine of not less than five hundred dollars, nor more than two thousand dollars, or by both. But the board of affairs shall pay any just obligations made by the city and keep and perform all contracts, agreements and obligations made under the law as it was the day before this act goes into effect, and for which and on which the city is liable or obligated when the board of affairs herein provided for goes into office.

*Filling Vacancies in Board of Affairs.*

Sec. 41. Whenever a vacancy from any cause whatever, shall occur in the office of member of the board of affairs and the time for a regular municipal election, as provided for in section twenty-four herein, is not within six months therefrom, then the board of affairs shall call a special election, at which the qualified voters of the city as shown by the last city registration shall fill such vacancy by the election of some person thereto but the person so elected must be

eligible to hold said office and shall not be of the same political party and of the same political faith as any two members of the board who at the time are members thereof. Such special election shall be governed by the laws of the state relating to elections and as prescribed in this act for regular elections.

Sec. 42. If there shall occur at any one time one or more vacancies on the board of affairs, the council by a majority vote of all the members elected thereto, shall fill such vacancies for the time being, but the person so appointed shall be of the same political party as the member of said board whose office was vacated and is being filled; and in no event shall such appointments be made so as to give any political party a majority on the board of affairs.

*Provided*, before any such appointment shall become final, the person so appointed shall make and file the oath required by section twenty-six of this act; and after the filing of said oath the council within thirty days may, if it so elects, by a majority vote of all members elected thereto, recall said appointments, or any one thereof and such appointment from that time shall be void and of no effect, and the vacancy caused thereby shall be filled in the same manner and under the condition prescribed in the first instance.

Members of the board of affairs thus appointed by the council to fill vacancies on the board of affairs, shall, before entering upon the discharge of their duties, take the oath required of other officers of the city, but they shall not be required to give any official bond; and they shall hold their said offices only until their successors shall have been elected and qualified as prescribed in section forty-one of this act.

#### *Attendance of Witnesses, Punishing Contempts, Etc.*

Sec. 43. The board of affairs and the council in the exercise of their respective powers and the performance of their respective duties, as prescribed by this act and by the laws of the state, shall have the power to enforce the attendance of witnesses, the production of books, and papers, and the power to administer oaths in the same manner and with like effect, and under the same penalties, as notaries public, justices of the peace and other officers of the state authorized to administer oaths under state laws; and said board of affairs and said council shall have such power to punish for contempts as is conferred on county courts by section thirteen of chap-

ter thirty-nine of the code. All process necessary to enforce the powers conferred by this act on the board of affairs and council shall be signed by the mayor (or acting mayor) and the president of the council, respectively, and shall be executed by any member of the police force.

*Absence of Officers.*

Sec. 44. When any member of the board of affairs or any appointive officer of the city shall from sickness or other cause be unable, for a short space of time, to attend to the duties of his office, the board of affairs, in case of the absence of a member of said board, may designate another member thereof to attend to the duties of such absent member, in addition to the duties already devolving upon him in the capacity of member of the board; and, in case of the absence of any appointive officer, the board may appoint some other officer of the city or other person to perform the duties of such officer, during his absence, either with or without the salary, in whole or in part, of such absent officer.

ARTICLE XI.

*Mayor.*

Sec. 45. The person receiving the highest number of votes for member of the board of affairs at the first election hereunder shall be duly elected mayor for the term of four years, or until his successor shall be elected and qualified; and the person receiving the highest number of votes at the election in one thousand nine hundred and eleven and who shall serve as member of the board of affairs the first two years of his term, shall be mayor for the term of two years beginning on the first day of May, one thousand nine hundred and thirteen, and at every regular election after one thousand nine hundred and eleven, the person receiving the highest number of votes for a full term as member of the board of affairs, shall be thereby elected mayor for the term beginning on the first day of May, two years after the beginning of such full term, so that after the first term of mayor a member of the board of affairs, receiving the highest number of votes, will be mayor after he shall have served two years as such member. In the event that a member of the board of affairs who has, at any election, received the highest number of votes so as to entitle him to serve as mayor, shall die, resign, be removed from office as a member of the board of affairs, or become ineligible, or for any

cause can not or does not qualify as mayor, then the board of affairs shall designate as mayor that person who at the election at which the mayor was elected, received the next highest number of votes for member of the board of affairs; and if the latter be ineligible, or fail to qualify for any cause, then the board of affairs shall designate the person who at said election received the next highest number of votes and so on. If at any time there be, for any cause, a lack of an eligible person hereunder entitled to serve as mayor, then the board of affairs shall designate a mayor from its members, and if the board cannot agree upon any one to serve at its first meeting, then the board shall call a meeting of council to fill such vacancy; which meeting shall be held within ten days after such failure of the board to elect. And if the board do not call the council meeting, then any member of council may do so, and the council shall fill such vacancy in the office of mayor from among the members of the board of affairs. If at any time, by death, resignation, or otherwise, the membership of the board of affairs be reduced below three, the council shall fill the vacancies at a meeting called, as in this article is provided. But the persons elected shall be of the same politics as those whose vacancies are filled by such election, it being unlawful for more than two members of the board of affairs to belong to the same political party. If at the first election two or more persons receive the same and the highest number of votes, then the council sitting as a canvassing board shall elect one of them as mayor for the term of four years.

## ARTICLE XII.

### *Franchises and Ordinances.*

Sec. 46. All franchises granting the right of occupancy of any portion of the streets or alleys for works of public utility or service, or granting any right or privilege, which the city has the power to grant to individuals, firms or corporations, in order that the latter may serve the public (except modifications or amendments to existing grants or franchises) may be made, but only upon the following restrictions and conditions. All such franchises, rights and privileges shall be granted only by ordinance duly passed by the board of affairs, and council.

No grant of any such franchise shall be made without, at the time of making it, providing that the grantee shall indemnify the city against all damages caused by construction, maintenance or

operation of such works. All reasonable additional provisions and conditions may be made for the protection of the public, necessary damage or inconvenience by reason of the construction, maintenance or operation thereof.

No grant of a franchise for the extension of or an addition to any line or work of public service through, over or under any additional street or territory of the city shall be made for a period extending beyond the time limited for the expiration of the franchise of the principal work of which it is an extension, and if the franchise of the principal work is one granted before this act goes into effect and not limited as to time, any franchise granted for an extension or addition thereto shall nevertheless be made subject to the conditions hereof, including a time limit of not exceeding fifty years.

All franchises hereafter granted, shall embody therein a plainly expressed condition where the franchise is for work to be useful chiefly to the citizens of the city, that at the expiration of such franchise the grantee shall, if required by the board of affairs or the governing body of the city, sell to the city the plant at what it is then worth. If the city and the owner of the plant can not agree upon its worth, then the value shall be ascertained by an impartial arbitration, one arbitrator to be selected by the city, one by such owner of the plant, these two to select a third and the decision of any two to be binding upon both parties.

No franchise or ordinance shall be passed without the affirmative vote of at least three members of the board of affairs, and approved by the council by a majority vote of all the members elected to said council.

Sec. 47. When any franchise granting the occupancy of the streets or highways, or granting or conceding any right or privilege for a work of public utility or service, shall be applied for, the application shall be made to the board of affairs in the first instance and before the same shall be heard and determined by the board of affairs, the laws of the state in reference to such applications and the publication of notice thereof shall be complied with.

Sec. 48. The board of affairs and council, by a majority vote of the members elected to each body, may, by resolution, modify for a time the provisions of any franchise as to the operation of any public service, and when any such modification shall be so made, and accepted by the holder of any such franchise, it shall be

effective for the time stated in the resolution. But in no event shall any such modification bind the city by estoppel or otherwise except as stated in such resolution.

Sec. 49. Whenever any ordinance shall be passed or license to sell spirituous liquors, wine, beer, porter, ale, and drinks of like nature granted by the board of affairs, the same shall, not later than the third day thereafter, be transmitted to the presiding officer of the council unless he be absent from the city and the same shall be by the presiding officer, or if he fail or refuse to do so, then by the recorder or any member of council, laid before the next regular meeting of council or before a meeting specially called for considering the same. And the council shall under its rules, consider the same and may adopt, ratify, object or amend any ordinance, as fully as the board of affairs could have done when considering the same. And if a majority of the members elected to council by a yea and nay vote, entered upon its minutes shall ratify or approve the ordinance, it shall be passed and become a law from its passage; but if all the members be not present, and the ordinance does not receive a majority, and there be not a majority of the council recorded against it, the ordinance may be again considered and voted upon by council at any other meeting until a majority of council shall vote for or against the ordinance. But if a majority elected shall vote against it, it shall not become a law and shall not be further considered. Council may also amend or modify the ordinance or may consider substitutes therefor and vote upon, pass or reject such amendments, modifications or substitutes, but on the final passage of any amended ordinance or substitute, the vote shall be taken by a yea and nay vote entered of record. If any amended or substituted ordinance be passed by council, it shall not become a law till such amended or substituted ordinance shall be passed by a vote of at least three of the board of affairs by a yea and nay vote entered of record, and when any such amended or substitute ordinance shall be passed by council, it shall be transmitted by the presiding officer or recorder to the board of affairs for such action of the board as it may deem proper.

Sec. 50. Council shall have the right to appoint such committees of its own body as it may deem proper and may give such committees power and authority to perform any duties and make any reports to council concerning the duties of council, and council may adjourn its meetings from time to time pending the consideration of

any matter, ordinance or license, and may postpone the announcement of any vote to an adjourned or a future meeting. And no failure of any officer to transmit to council any ordinance or action of the board of affairs shall prevent the council from considering the same. Council shall have the power to veto, reject or approve any license to sell spirituous, liquors, wine, beer, porter, ale and drinks of like nature granted by the board of affairs and no such license shall be effective until approved by a majority of all the members elected to council by a yea and nay vote entered of record.

Sec. 51. Publication of notice to present franchise and other preliminaries prescribed by the laws of the state relating thereto, shall be had in the manner prescribed by state laws, before the board of affairs shall act on any such franchise; but the passage of any franchise shall be *prima facie* proof that such notice was given as prescribed by law.

Sec. 52. The style of any ordinance enacted by the board of affairs shall be: "Be it ordained by the board of affairs and council of the City of Charleston," but the ordinances now in force shall remain in effect until amended or repealed, except where the same are in conflict or inconsistent with this act.

Sec. 53. No ordinance shall be passed, except by bill, and no bill shall be so amended in its passage as to change its original purposes. All bills must be in writing or printed and presented at the regular weekly public meeting of the board of affairs and read in full by the recorder. No bill shall be considered for final passage at the meeting at which it was introduced, but at any subsequent regular weekly public meeting of the board of affairs such bill may be taken up by the board of affairs for consideration and final action. No bill except general appropriation bills which may embrace the various subjects and accounts for and on account of which moneys are appropriated, shall contain more than one subject which shall be clearly expressed in its title. No bill shall become an ordinance unless on its final passage three of the members of the board of affairs vote in its favor and the vote be taken by the yeas and nays, and the names of the members voting for and against the same be entered of record in the minutes of the proceedings of the board of affairs. No ordinance shall be revived or re-enacted by mere reference to the title thereof, but the same shall be set forth at length as if it were an original ordinance, nor

shall any ordinance be amended by providing that designated words thereof be stricken out, or that designated words be inserted, or that designated words be stricken out and others inserted in lieu thereof, but the ordinances or sections amended shall be set forth in full as amended. All ordinances in force at the time this charter goes into effect not inconsistent therewith, shall remain in full force until altered or repealed as herein provided and all rights, actions, proscriptions and contracts of the city not inconsistent therewith shall continue to be valid as if this act had not been passed.

Sec. 54. All ordinances passed shall be spread *in extenso* upon the records of the board of affairs and council when adopted by each. All vetoes of council of any licenses and all rejections of any ordinances passed by the board of affairs shall be read in open meeting of the board and noted in the minutes of its proceedings. All amended or substituted ordinances passed by council shall be acted upon by the board of affairs as an original ordinance pending before it.

The board of affairs shall provide a well bound book in which shall be copied by the recorder all ordinances in the order in which they are passed, which ordinances so copied shall be compared with the originals by the mayor and shall be signed by him when found correct. Such books shall be indexed so as to show in brief form the substance of the ordinance, and shall be received by all courts and justices in this state as evidence, but the council may adopt, by ordinance properly designated and describing it, a code of laws and ordinances which, when adopted, shall be printed in book form or it may be adopted as a whole after it is printed, and the said code shall be and become the laws and ordinances of said city; and shall be received as such in all the courts of this state, and the printed volume published under the orders of the board of affairs shall be so received as evidence of what is printed therein until errors or omissions be affirmatively shown therein.

Sec. 55. It shall be the duty of the board of affairs except as hereinafter provided to cause such of the ordinances imposing a penalty, fine or assessment and such other ordinances of a public and general nature as they may deem best calculated to give general information to the citizens, to be published within five days in two daily newspapers of opposite politics published in said city;



but the failure to publish any such ordinance, unless otherwise herein provided, shall not invalidate said ordinance.

Sec. 56. Whenever it is provided by any statute, ordinance, franchise or contract that any work is to be done or approved by the common council of the city of Charleston or any committee of said council, or that any notice, or order may or shall be given by the said common council, or any committee thereof, it shall hereafter be deemed a compliance with the said terms of said statute, ordinance, franchise or contract if said work is done or approved, or said order or notice is given by the board of affairs, which board is hereby declared to be to such an extent the successor of the common council of the city of Charleston.

### ARTICLE XIII.

#### *Police Judge and Other Officers.*

Sec. 57. All persons elected or appointed to the offices named in this act shall be conservators of the peace within said city, and they, and any other officer provided for under this act, may be given authority of police officers by the board of affairs.

The police judge shall be *ex officio* a justice and a conservator of the peace with authority to issue process for all offenses committed within the police jurisdiction of the city of Charleston, of which a justice of the peace has jurisdiction under state statutes, and for all violations of any city ordinances, and shall have charge of and preside over the police court of such city; and may commit persons charged with felony or misdemeanor to jail or take bond for their appearance before the grand jury of the circuit, intermediate or criminal courts of Kanawha county; he shall keep an accurate record of all his judicial proceedings in said court, showing the style of each case, which record shall be indexed and numbered. It shall be his duty to hold daily sessions of his said court, Sunday excepted. Before trying any person charged with any violation of any ordinance he shall issue his warrant specifying the offense or violation charged; he shall render judgment in any case as the law of the state or the ordinance of the city applying thereto may require; he shall also have the power to issue executions for all fines, penalties and costs imposed by him, and he may require immediate payment thereof, and in default of such payment, may commit the party so in default to the jail of the county of Kanawha,

or other place of imprisonment in said city, if there be one, until the fine and penalty and costs shall be paid or satisfied, to be employed during the term of imprisonment as hereafter provided, but the term of imprisonment in any such case shall not exceed thirty days, and in all cases where a person is sentenced to imprisonment or to the payment of a fine of ten dollars or more, such person shall be allowed an appeal from such decision to the intermediate court of said Kanawha county upon the execution of an appeal bond, with surety deemed sufficient by the said police judge in a penalty double the amount of the fine and costs imposed by him conditioned that the person proposing to appeal will appear before the intermediate court of Kanawha county on the first day of the next term thereof to answer for the offense wherewith he is charged and not depart thence without leave of the court. And in no case shall judgment for a fine of less than ten dollars be given by the police judge if the defendant, his agent or attorney object thereto. If such appeal be taken, the warrant of arrest, the transcript of the judgment, the appeal bond and other papers of the case shall be forthwith delivered by the said police judge to the clerk of the said intermediate court and the court shall proceed to try the case as upon indictment or presentment and render such judgment, including that of cost, as the law and the evidence may require.

The expenses of maintaining such persons committed to the jail of the county by such police judge shall be paid by the city. The police judge shall account for and pay over the amount of all fines collected by him weekly to the treasurer of the city and shall make monthly reports thereof and of all other matters pertaining to his office to the board of affairs of the city. In the absence of the police judge the recorder of the city shall act as such police judge with the same power and authority.

Sec. 58. The police judge shall be an attorney at law and shall not practice in said police court or as an attorney or counsellor in any case appealed or removed therefrom, but shall have the right to practice law as attorney in other courts and cases: *provided*, that he shall not practice law in criminal cases in Kanawha county.

#### ARTICLE XIV.

##### *Licenses.*

Sec. 59. Whenever anything for which a state license is required is to be done within said city or within two miles of the cor-

porate limits thereof, the board of affairs as herein provided may by ordinance require a city license to be had for doing the same, the amount of which license shall be fixed by the board of affairs, in no case, however, to be less than the amount charged by the state for a license for doing the same thing, and may in any case, require from the person licensed a bond, with sureties and in such penalty and with such conditions as it may deem proper, and the board of affairs on notice, may revoke such license at any time if the condition of the said bond be broken; and no license to sell strong or spirituous liquors or wine or beer, ale, porter or drinks of like nature, within said city, or within two miles of the corporate limits thereof, shall be granted by the county court of Kanawha county, unless the person applying therefor shall produce to said county court the certificate of the board of affairs of said city, that said board of affairs has granted a city license authorizing said person to sell as aforesaid and the same has been approved by the council as herein provided for; and upon the production of said certificate before said county court, said court may at its discretion grant a state license to sell as aforesaid to the said person upon his compliance with all the requirements of law in relation thereto.

A person assessed with a city license for the sale of strong or spirituous liquors, or wine or beer, ale, porter or drinks of like nature within said city or within two miles of the corporate limits thereof, shall pay said tax to the treasurer of the city before any such license be granted to him by said board of affairs. The board of affairs may impose a license and assess a tax thereon on all wheeled vehicles for public hire and upon all dogs kept within said corporate limits. The board of affairs may prescribe, impose and enforce reasonable fines and penalties, including imprisonment, under the order of the police judge of said city, or the persons lawfully exercising his functions, upon any person carrying on, or attempting to carry on, any business for which a city license is required, without first obtaining a city license therefor and paying the city license tax assessed thereon. All licenses provided for in this act shall be paid to the treasurer of the city, and for the purpose of enforcing the provisions of this section the city shall have police jurisdiction for two miles beyond the corporate limits thereof.

Sec. 60. The license of any person issued by said city who shall be convicted in any court of competent jurisdiction of the illegal

sale of spirituous liquors or drinks of like nature, may be revoked at the pleasure of the board of affairs, and in the event of a second conviction of the same person for any illegal sale of such liquor or drinks of like nature, such license shall be revoked by the board of affairs; *provided*, that for one such conviction of any person holding such a license of the violation of any law or ordinance forbidding the sale of such articles on Sunday, the board of affairs shall revoke such license and no license shall be thereafter granted him.

The board of affairs shall have the power to make all regulations and pass all ordinances necessary and proper concerning the granting and revoking of all licenses.

In order to prevent any combination or collusion concerning licenses, the board of affairs shall prescribe, by ordinance, the basis upon which liquor licenses shall or may be granted and shall prescribe the number thereof according to population, location, or by some other fair basis; and after such ordinance or ordinances shall have been passed the council shall have power to postpone its action upon the granting of any license till the board of affairs shall have granted the number authorized by such ordinance to be granted, and it shall be lawful for the council to revoke any license or licenses whenever it shall be charged before it by any five taxpayers, and, after notice to the licenses proved to its satisfaction, that by collusion, fraud or combination, the benefit of any license or licenses is controlled or enjoyed by any trust or combination to control the liquor business.

## ARTICLE XV.

### *Nuisances.*

Sec. 61. The board of affairs of said city shall have authority to abate and remove all nuisances in said city. It may compel the owners, agents, assignees, occupants or tenants of any lot, premises, property, building or structure, upon or in which any nuisance may be, to abate and remove the same by orders therefor, and by ordinance provide a penalty for the violation of such orders.

Said board of affairs may also by its own officers, appointees and employees abate and remove nuisances. It may by ordinance regulate the location, construction, repair, use, emptying and cleaning of all water closets, privies, cess-pools, sinks, plumbing, drains, sive, unsightly, unwholesome, objectionable or dangerous substances

or liquids are, or may accumulate, and provide suitable penalties for the violation of such regulations, which may be enforced against the owner, agents, assignee, occupant or tenant, of any premises, or structure where such violation may occur.

If the owner, agent, tenant, assignee or occupant, of any such premises, lot, property, building or structure, as is mentioned herein, shall fail or refuse to abate or remove any such nuisance, as mentioned herein, or to comply with the provisions of any such ordinance and the regulations herein contained, the said board of affairs may have said nuisance abated or the provisions of said ordinance or ordinances carried out, after reasonable notice to said owner, occupant, tenant, agent or assignee of its intention so to do, and collect the expenses thereof, with one per centum per month interest added from the date of said notice, from the said owner, occupant, tenant, agent, or assignee, by distress or sale, in the same manner in which taxes, levied upon real estate for the benefit of said city are herein authorized to be collected, and the expense shall remain a lien upon said lot, or part of lot, the same as taxes levied upon real estate in said city; which lien may be enforced by a suit in equity before any court having jurisdiction, as other liens against real estate are enforced. In case of non-resident owners of real estate such notice may be served upon any tenant, occupant, assignee, or rental agent, or by publication thereof once a week for not less than two consecutive weeks in two newspapers of opposite politics, published in said city.

And in all cases where any tenant, occupant or agent is required to abate and remove any nuisance under the provisions of this section, or comply with the provisions of any such ordinance as is mentioned herein, the expense thereof may be deducted out of the accruing or accrued rent of said property or amount due said owner from said agent, and such tenant, occupant or agent may recover the amount so paid from the owner, unless otherwise especially agreed upon.

Any expense incurred by the board of affairs as herein provided, in the manner aforesaid, may be collected in the manner herein provided, notwithstanding the imposition of any other penalty or penalties upon any of the persons named herein, under any of the provisions of this act. The abatement or removal of any such nuisance by the board of affairs at the expense of said city, as herein provid-

ed, shall be *prima facie* proof that the said notice to the owner, occupant, tenant, agent or assignee, was given as herein prescribed.

Sec. 62. The board of affairs may require all owners, tenants, occupants of improved property which may be located upon or near any street or alley along which may extend any sewer or system of sewerage, which the said city may construct, own, or control, to connect with such sewer, or system of sewerage, all privies, ponds, water closets, cess pools, drains, or sinks located upon their respective properties or premises, so that their contents may be made to empty into such sewer or system of sewerage.

#### ARTICLE XVI.

##### *Sidewalks.*

Sec. 63. The board of affairs shall have the right and authority to establish the width of any sidewalk on any street, alley, or public square, or portion thereof in said city, to cause to be put down a suitable curb of brick, stone or other material along and for the foot ways and sidewalks of the streets, alleys or public squares or portion thereof, and to order the construction, re-laying and repair of sidewalks and gutters of such material and width, and in such manner, as the board may reasonably prescribe, by the owners or occupiers of the lots or parts of lots facing upon said streets, alleys and public squares; and in case of a failure or refusal of any such owner or occupiers of the lots or parts of lots to construct, re-lay or repair such sidewalks and gutters, when required, it shall be lawful for the board of affairs to have such sidewalks and gutters constructed, re-laid or repaired, and levy and collect the expense thereof with one per centum per month interest added after a demand of thirty days has been made by the treasurer of the city from the said owner, owners, occupier or occupiers, or any of them; and in all cases of such assessment, whether for the construction, re-laying or repairing of sidewalks or gutters, payment thereof shall be made to the treasurer within thirty days after the completion of the work and demand made, and if not so paid the board of affairs is hereby authorized to collect or cause to be collected the expense thereof with one per centum per month interest added after the work has been completed and a demand of thirty days, and they shall have the power to collect or cause to be collected the same from said owner, owners, occupier or occupiers, or any of them, by distress

and sale, in the same manner in which taxes levied upon real estate for the benefit of the said city are herein authorized to be collected, and in addition there shall be a lien upon the real estate against which such assessment has been levied for the construction, re-laying and repairing of sidewalks and gutters as herein provided, which lien may be enforced by a suit in equity before any court having jurisdiction as other liens against real estate are enforced, and it shall be the duty of the board of affairs to cause to be certified to the clerk of the county court of Kanawha county their order laying an assessment authorized by this section. The clerk of the county court of Kanawha county is hereby required to record and index such assessments in the proper trust deed book in the name of each person against whose property assessments appear therein; *provided, however*, that a reasonable notice shall first be given to said owner or occupier, or their agent, that they are required to construct, re-lay, or repair such sidewalks or gutters. In case of non-residents, who have no known agent in said city, such notice may be given by publication for not less than once a week for two consecutive weeks in any newspaper printed in said city; and in all cases where a tenant shall be required to construct, re-lay or repair sidewalks or gutters in front of the property of his or her occupancy, the expense of such construction re-laying, or repairing may be deducted out of the accruing rent of said property, and he may recover the amount so paid from the owner, unless otherwise especially agreed upon. The laying or construction of any such sidewalks by said city shall be *prima facie* proof that the said notice to the owner (resident or non-resident) or occupier, or their agent, was given as herein required.

#### ARTICLE XVII.

##### *Taxes.*

Sec. 64. The board of affairs shall ascertain the total expense of said city to be provided for by levy for the fiscal year in which said levy is made, and it shall ascertain a detailed itemized estimate of the sum of money necessary to pay interest accruing on the bonded indebtedness of said city, the amount required for the several sinking funds for the reduction of the principal thereof, the amounts necessary for the support of the various departments of the city and for the improvement of its streets, alleys, avenues and public grounds, real and personal property, contingent expenses,

and other expenses, together with an itemized statement of the estimated receipts other than that to be derived by the annual levy, and after receiving such estimates, and before making the levy, it shall apportion the rate thereof, including the estimated receipts for licenses and all other sources among the several funds so ascertained, and provided, for which apportionment shall be spread upon the records of said board, and in making said estimates, providing for the revenue for the fiscal years, etc., it shall be the duty of the board of affairs to strictly observe all the provisions of chapter nine of the acts of the legislature, one thousand nine hundred and eight, entitled: "An act to regulate the rate and manner of laying levies for taxation in counties, magisterial and school and independent school districts, and municipal corporations, and to provide penalties for the illegal expenditure of public moneys, incurring of illegal obligations and the laying of illegal levies by any tax levying body, and for the distribution of a portion of the school fund," and all amendments thereto.

Sec. 65. The board of affairs shall have authority to levy and collect an annual tax on real estate and personal property in said city, and to impose a license and assess a tax thereon on wheeled vehicles for public hire and for all dogs kept within said city, and to impose a tax upon all other subjects of taxation under the several laws of the state, which taxes shall be uniform with respect to persons and property within the jurisdiction of said city, and shall only be levied on such property, real, personal and mixed, and on capital on which the state imposes a tax; *provided*, that no greater levy shall be laid by said board of affairs on the taxable property of said city than is to be permitted to be laid under any state law relating to municipalities, and *provided, further*, that the board of affairs shall, in making such levy, be subject to all the provisions of chapter nine of the acts of the legislature of one thousand nine hundred and eight and any and all amendments thereto. There shall be a tax of two dollars annually assessed on each and every male inhabitant of said city over the age of twenty-one years who is subject to a capitation tax under the laws of the state of West Virginia. The same shall be set out and included in the personal property book against every such inhabitant, and shall be collected under the authority of the board of affairs at the time of collecting other levies and taxes.



Sec. 66. The city taxes annually levied by said board of affairs shall be collected as follows: Immediately after the annual levy for city taxes is laid the board of affairs shall direct the proper officer of the city to extend the same on the property book made out by him including therein the proper capitation tax; he shall make out therefrom proper tax tickets in the following manner: That is to say, instead of a single ticket for the whole amount charged to any person, firm or corporation, there shall be two tickets, each for one-half of said amount; these half tickets shall be severally numbered or designated "first" and "second" and the same, after being examined and compared by the board of affairs and found to be correct, shall be turned over to the treasurer of the city on the first day of October following the levy and the treasurer's receipt for the gross amount thereof shall be returned, entered upon its record and the treasurer charged therewith. The treasurer shall give notice by publication for twenty days in two newspapers of opposite politics published in said city, that said tax tickets are in his hands for collection, stating the penalty for non-payment thereof and the time and place when the same may be paid; *provided, however,* that the taxpayers shall have the right to anticipate the payment of the whole or any part of the taxes assessed against them.

The one-half tickets designated "first" may be paid to the treasurer of the city any time before the first day of November next succeeding said levy; the one-half tickets designated "second" may be paid to the treasurer of the city at any time before the first day of May next succeeding said levy. To all the half tickets designated "first" remaining unpaid in the treasurer's hands on said first day of November succeeding said levy, a penalty of ten per cent shall be added and collectible from the taxpayers. To all half tickets designated "second" remaining unpaid in the treasurer's hand on the first day of May succeeding said levy a penalty of ten per cent shall be added and shall be collectible from the taxpayers. On said first day of November succeeding said levy, all such half tickets designated "first" and on said first day of May succeeding said levy all such half tickets designated "second" remaining unpaid in the treasurer's hands shall be taken up by said board of affairs and settlement had with said treasurer on said days, respectively, or on the next succeeding days respectively, if said days shall fall upon Sunday, and thereupon said board of affairs shall place said tickets

in the hands of the city sergeant for collection and shall take his receipt therefor; *provided, however*, that the board of affairs shall have the power any year, by resolution, to extend the time within which tickets may remain in the treasurer's hands and be paid to him without adding the penalty, for a period of not to exceed fifteen days.

The sergeant shall have the power to collect said tickets so placed in his hands, together with the penalties thereon hereinafter provided to be added thereto and the compensation of such sergeant for making such collection of the taxes aforesaid shall be fixed by the board of affairs.

The sergeant shall be charged with the gross amount of said tax tickets so delivered to him for collection including the penalties accrued thereon when so delivered, and no deduction therefrom shall be allowed, unless on or before the first day of August of each year he makes out and returns to the board of affairs a delinquent list of taxes uncollected for such year, with his oath attached thereto, stating that such list is correct and just and that he has received no part of the taxes mentioned therein, and that he has used due diligence to find property liable to distress for taxes and has found none, and that he could not collect the same.

Neither the treasurer nor the sergeant shall take or collect anything but money for payment of taxes.

Sec. 67. The sergeant shall have the power to collect the city taxes except as otherwise provided in this act, and he shall also have power to collect city claims which may be placed in his hands by the council for collection, except fines imposed.

Sec. 68. All goods and chattels belonging to a person, firm, corporation or estate, assessed with any city taxes, whether the same be a capitation tax or a tax upon real or personal property or an assessment for paving or other improvements, shall be liable for said tax, and may be distrained therefor in whosoever possession they may be found, and the sergeant shall have the same power to collect said tax or assessment from any person owing a debt to or having in his possession any estate belonging to a person assessed with any tax or assessment of any kind that the sheriff has to collect state taxes in such cases. The sergeant may distrain and sell for all city taxes and assessments and in all respects have the same power to enforce the collection thereof as the sheriff has to enforce the collection of state taxes.

Sec. 69. There shall be a lien upon all real estate within said city for the city taxes assessed thereon, including such penalties added thereto for non-payment thereof as are prescribed by this act, from the first day of January of the year in which said taxes are assessed. Said liens may be enforced by appropriate suit in any court of record in Kanawha county; *provided*, such suit be instituted within five years from the time the said liens attached as herein provided, and such suit may either be instituted by and in the name of the city of Charleston as plaintiff, or said city may intervene by petition in any suit pending to sell or enforce liens against any real estate which is subject to such lien for said taxes. The liens herein created shall have priority over all other liens except those for taxes due the state.

Sec. 70. Said liens for city and attendant penalties, may also be enforced by certifying the same to the clerk of the county court of Kanawha county for certification to the state auditor, and the same may be certified down by said auditor, and sold for the taxes, interest, penalties and commissions thereon, in the same manner, at the same time, and by the same officer as real estate is sold for taxes, interest, damages, costs and commissions due the state thereon, which officer shall account therefor on settlement with the board of affairs and pay over same to the treasurer of the city.

Sec. 71. No taxes or levies shall be assessed upon or collected from the taxable persons or property within the corporate limits of said city, for the construction, improvement or keeping in repair of roads or the building, leasing, repairing of school houses, or the purchase of lands for the same, or for the support of schools, or for the support of the poor of Kanawha county, outside of said corporate limits, for any year in which it shall appear that said city shall at its own expense provide for its own poor and keep its own roads, streets and bridges in good order. And neither the county court of Kanawha county, nor the authorities of the districts in which said city is situated, shall have or exercise jurisdiction within the corporate limits with relation to the roads, streets, alleys, bridges, wharves, docks, ferries, schools or school houses, but the same shall be and remain under the exclusive jurisdiction and control of the municipal authorities of said city, except that the board of education in the independent school district of the city of Charleston shall have jurisdiction, supervision and control of the schools and school houses in said district; and said city shall be liable only for the

construction, improvement, repair and good order of the roads, streets, alleys, wharves and bridges in its corporate limits.

#### ARTICLE XVIII.

##### *Depositing City Funds.*

Sec. 72. It shall be the duty of the treasurer of the city to keep all funds of the city in some bank or banks within said city which shall pay interest on such deposits and which shall pay interest on the average daily balance of such funds in all accounts of the per cent equal to that paid by state depositories on all funds of the state of West Virginia and in the same manner and at the same time. If no bank within said city is willing at any time to receive deposits of the treasurer and to pay such interest thereon, the treasurer shall report this fact to the board of affairs, who shall thereupon designate a bank or banks in which he shall deposit said funds for the time being and until some bank in said city will receive such deposits on such terms. Before receiving any such deposits such bank or banks shall give bond in such penalty as the board of affairs shall prescribe and with sureties to be approved by said board of affairs conditioned for the prompt payment whenever lawfully required of all the city moneys or parts thereof which may be deposited with them which bonds shall be renewed at such times as the board of affairs may require.

#### ARTICLE XIX.

##### *Paving Streets, Constructing Sewers, Etc.*

Sec. 73. The board of affairs of the city of Charleston are hereby authorized to issue and sell the bonds of the said city for the purpose of providing for grading, paving and otherwise improving the streets and alleys of said city or constructing sewers for the proper draining of same in anticipation of special assessments to be made upon the property abutting upon the streets and alleys so improved, or property so sewered or drained, and such bonds may be in such an amount as shall be sufficient to pay the entire estimated cost and expense of said improvement for which such special assessments are levied; *provided*, that the price for which said bonds are sold shall not be below the par value thereof; said bonds may be payable in groups of one-fifth of the whole issue payable in two, four, six, eight and ten years respectively, and all payable in not to ex-

ceed ten years from the date of issue thereof and shall bear interest at not to exceed six per centum per annum, payable annually; and in the issuance and sale of said bonds, the city shall be governed by all the restrictions and limitations of the constitution of this state and the restrictions and limitations of the statute of this state with respect to the issuance and sale of other bonds, and the assessments as paid and provided for in this act shall be applied to the liquidation of said bonds and the interest thereon; and if by reason of the penalties collected with the delinquent assessments there be any balance after the payment of said bonds and all accrued interest and costs, the said balance shall be turned into the city treasury to the credit of the interest and sinking fund of the city.

*Provided*, that said city shall not by the sale or issue of such bonds cause the aggregate of its debt of every kind whatsoever to exceed five per centum of the value of the taxable property therein; and *provided, further*, that nothing herein contained shall be construed as authorizing said city to become indebted in any other manner or for any other purpose, to an amount including the existing indebtedness in the aggregate exceeding two and one-half per centum on the value of the taxable property therein (as provided in chapter fifty-one of the acts of one thousand nine hundred and five,) except for the purpose of grading, paving, sewerage and otherwise improving the streets and alleys of said city and as provided for in this act; nor shall they make such issue and sale without at the same time providing for the collection of a direct annual tax sufficient to pay annually the interest on such debt and the principal thereof within not exceeding ten years.

All the assessments, interest and penalties thereon, collected from the abutting property owners on account of grading, paving, sewerage or otherwise improving the streets and alleys of such city, under the provisions of this act, shall annually be applied to the annual tax required to pay the interest on such debt and such principal within and not exceeding ten years; and in the event that the assessments, interest and penalties so collected do not amount to a sum sufficient to pay annually the interest on such the board of affairs of said city shall collect so much of said levy as will pay annually the interest on such debt and the principal thereof within and not exceeding ten years.

Sec. 74. Whenever the board of affairs of said city shall deem it expedient to cause any street or alley in said city or portion thereof to be paved, curbed or macadamized or otherwise improved in a permanent manner, it shall order the work done in the following manner and upon the following terms: The contract for such paving or other improvements shall after due advertisement in which the board of affairs shall reserve the right to reject any and all bids, be let, if let to the lowest responsible bidder. The contractor shall look only to the city for the payment of the work, and in no sense to the abutting land owners. The total cost of grading and paving or otherwise improving any such street or alley, with the exception in the case of a street occupied by street car tracks or other railways of the distance between the rails and two additional feet outside of each rail, which portion shall be borne and paid entirely by the street car or other railway company operating such street or railway (unless otherwise provided by the franchises of such street car or other railway company granted previous to the passage of this act) shall be borne by the owners of land abutting upon said street, alley or portion thereof, according to the following plan, that is to say: Payment is to be made by all land-owners, on either side of such portion of a street or block so paved or improved in such portion of the total cost, less the portion, if any, chargeable to such street or other railway company, as the frontage in feet of his land so abutting bears to the total frontage of all land so abutting on such street, alley or portion thereof so paved or improved as aforesaid. The cost of such paving or improvement chargeable to the abutting owners is not to include any portion of amount paid for paving of squares at intersection of streets or for curbing which shall in all cases be borne and paid by the city.

When the paving of any street, or alley, or portion thereof, shall have been let to contract and the work done as hereinbefore provided, it shall be the duty of the engineer of said city to cause the several frontages abutting thereon to be measured and to calculate the assessment upon each and every land owner so abutting and to certify the same to the board of affairs, showing the proper amount to be determined as provided in the foregoing plan. It shall be the duty of the board of affairs to examine and compare such assessment, amounts and names so certified to it, and thereupon said board of affairs shall give notice by publication once a week for two successive weeks in two newspapers of opposite politics published

in said city, that an assessment under this act is about to be laid against the abutting property for paving or improvements done on said streets or alleys, describing the location of such paving or improvements, and any owner or owners thereof shall have the right to appear before said board of affairs within two weeks from the first publication thereof and move said board to correct any apportionment or assessment excessive or improperly made as charged, which corrections said board of affairs shall have the power to make according to the intent of this act, and if found to be correct or when corrected by the board of affairs, as aforesaid, it shall enter the same together with a description of the lots of land as to location, frontage, depth and ownership, so far as the same may be ascertained, upon its records and to enter in its records that such owners and lots be assessed and chargeable with the amount so ascertained to be borne by them, respectively, and when so approved, certified and entered of record, the same shall be and constitute an assessment against said owners and lots for such respective amounts. And it shall be the duty of the board of affairs to immediately certify such assessment to the treasurer for collection as herein provided, and a copy of said order shall be certified by the recorder to the clerk of the county court of Kanawha county, who shall record and index the same in the proper trust deed book in the name of each person against whose property assessments appear therein. The amount so assessed against said abutting land owners shall be paid in ten payments, as follows: That is to say, one-tenth of said amount, together with interest on the whole assessment for one year, shall be paid into the city treasury of the city, before the first day of May next after said work is completed and said assessments have been certified to the county clerk. And a like one-tenth together with interest for one year upon the whole amount, remaining unpaid on or before the first day of May in each succeeding year thereafter until all has been paid, and each of said installments of one-tenth, beginning with the first shall bear interest on the amount of said installment at six per centum per annum from the date of the record of same in the county court clerk's office until paid; *provided, however*, that any abutting owner so liable for any portion of the cost of such paving shall have the right at any time after the same is certified as aforesaid to the treasurer for collection to anticipate the payment of any or all of said assessments

and shall be allowed to pay the face of said assessments with interest at six per cent per annum only to the time of payment.

To each of such installments of assessments remaining unpaid in the treasurer's hands on the days herein specified for the payment thereof, a penalty of ten per centum shall be added and any assessment so remaining unpaid in the treasurer's hands on such date, shall be taken up by the board of affairs on such settlements had with the treasurer on such dates, and thereupon the board of affairs shall place such assessments with the penalty added thereto, in the hands of the city sergeant to be treated and considered, and payment thereof enforced in all respects as hereinbefore provided for the collection of taxes due the city, and they shall be a lien upon the property liable therefor the same as for taxes, which lien may be enforced in the same manner as provided for taxes. The liens hereinbefore provided for shall have priority over all other liens except those for taxes due the state and shall be on a parity with taxes and assessments due the city. Whenever all such assessments, for paving, sewerage, macadamizing or other improvements shall be paid in full to the treasurer he shall deliver to the party paying the same a release of the lien therefor which may be recorded in the office of the clerk of the county court of Kanawha county as other releases of liens, and whenever any such assessments shall not be in the hands of the treasurer for collection, but the same shall be shown to the satisfaction of the city auditor or other official performing the duties of auditor, to have been paid in full to any officer entitled to receive the same, such auditor or the mayor may in like manner execute such release.

Sec. 75. Whenever the board of affairs shall order the construction of any public sewer in said city, the owners of the property abutting upon any street in which such sewer shall be constructed, shall be charged with and liable for sewerage assessments as follows: When said sewer is completed the engineer of said city shall report to the board of affairs in writing, the total cost of such sewer, and a description of the lots and lands as to the location, frontage, depth, and ownership liable for such sewer assessment, so far as the same may be ascertained, together with the amount chargeable against each lot and owner, estimated on the basis of one dollar per foot for inside lots, and one dollar and twenty-five cents per foot for corner lots frontage measures on said sewer being considered, and not over forty feet front shall be considered a corner lot, ex-



cept that such estimate as to the corner lots fronting thereon and having a greater depth than one hundred and fifty feet shall be estimated at one dollar and fifty cents per foot frontage and any lot having a depth of two hundred feet or more and fronting on two streets, one in the front and another in the rear of said lot, shall be assessed on both of said streets, if a sewer is constructed on both streets, or if fronting on a street and running back two hundred feet or more to an alley shall be assessed on both the street and alley; if a sewer shall be constructed in both street and alley, where a corner lot has been assessed on one end it shall not be assessed on the side; and thereupon said board of affairs shall give like notice by publication as is required in case of street paving assessments, and the same rights shall exist as to the persons and property affected and the same duty as to corrections by said board of affairs as are prescribed with reference to paving, which report shall in like manner be examined by the board of affairs, and if found to be correct or corrected as aforesaid, and such estimated assessments to be a fair and equitable apportionment of the cost of such sewer upon the basis hereinbefore described; it shall enter an order upon its records setting forth such location, depth, ownership and said amount of such sewer assessment, against each, respectively, calculated as aforesaid, and the entry of such order shall constitute and be an assessment for such proportion and amount so fixed therein against such respective owners and lots, and if after such advertisement, notice and hearing said board of affairs shall find that such apportionment at such rate is unjust, or inequitable, and contrary to the interest of this act, it shall ascertain, fix, and assess the cost thereof among and upon the abutting owners respectively, justly and equitable and according to the intent hereof, and in like manner, assess and enter the amount so fixed respectively upon its records, and the board of affairs shall in either event thereupon certify the same to the treasurer for collection, and certify a copy of such order to the clerk of the county court of Kanawha county, who shall record the same in the proper trust deed book, and index the same in the name of each owner of any such lot so charged with such assessment, and such assessment so made shall constitute and be a lien upon said lots respectively which shall have priority over all other liens, except those for taxes due the state, and shall be on a parity with other taxes and assessments due the city. Said amounts so assessed against the said several land owners

shall be paid by the parties liable therefor to the said treasurer at all times in the manner and with the attendant penalties for failure to pay promptly at the time prescribed in all respects as hereinbefore provided in the case of assessments for paving streets and alleys in a permanent manner, and the parties liable therefor shall in the same manner and to the same extent have the right and be entitled to anticipate any or all of such installments thereon as in such case provided. The owner or owners of, or the tenants, occupants or agents of any lot abutting on or near or adjacent to any street or alley in said city, on which a public sewer is or may hereafter be laid and constructed upon which lot any business or residence building is or may hereafter be erected, or upon which any water stands not connected with a public sewer, may be required and compelled by the board of affairs to connect any such building with such sewer. Notice to so connect may be given by the board of affairs to the owner, lessee, or occupant of such building. Each day's failure to comply with such notice and connect with such sewer by such owner or owners, after ten days after such notice is given shall be a misdemeanor and a separate and new offense under this section, and each such offense shall be punishable by fine of not less than five nor more than twenty-five dollars. The expense incurred by any tenant, occupant, or agent in complying with the order of said board of affairs to make such sewer connections may be deducted out of the accruing rents as provided for in section sixty-one relating to the abatement of nuisances. Jurisdiction to hear, try, determine, and sentence for violation of this section is vested in the police court of such city.

The liens herein and hereinbefore provided for street paving, macadamizing, and sewerage assessments and assessments for other improvements, shall constitute liens upon the real estate upon which they are assessed, as against creditors of the owners thereof, or purchasers for value, and without actual notice of such liens, only from and after the time that the statement thereof certified as aforesaid, shall be filed for record in the office of the clerk of the county court of Kanawha county.

Sec. 76. Whenever it is deemed expedient by the board of affairs of said city to provide for the grading, paving, sewerage, macadamizing or otherwise improving any street or alley therein to be paid for in whole or in part by special assessments, said board of affairs shall declare by resolution three of the members elected

thereto concurring, by aye and no vote, the necessity of such improvement. At the time of the passage of said resolution the said board shall have on file in the office of the recorder plans, specifications, estimates and profiles of the proposed improvements, showing the proposed grade of the street and improvement, after completion, with reference to the property abutting thereon, which plans, specifications, estimates and profiles shall be open for the inspection of all persons interested. Said resolution shall determine the general nature of the improvement, what shall be the grade of the street, alley or other public place to be improved, as well as the grade or elevation of the curbs and said board shall approve the plans, specifications, estimates and profiles for the proposed improvement.

The board of affairs shall also determine in said resolution the method of paying for the work contemplated in said plans and specifications, whether by an appropriation from funds in the treasury unappropriated, or whether or not bonds shall be issued in anticipation of the collection of special assessments to be made against the abutting property owners as provided for in section seventy-four of this act. Assessments shall be payable in ten installments as provided for in said seventy-fourth section. The resolution herein provided for declaring the necessity for said improvement shall be published at least once a week for two successive weeks after its adoption in two newspapers published in the city, and of opposite politics, and an affidavit of the publisher showing publication for such time, together with a copy of said notice attached, shall be filed with the recorder of the said city and spread upon the record of the minutes of the next meeting of the board of affairs. Said resolution shall be in effect from and after the first publication thereof as herein provided for.

Sec. 77. A notice of the passage of the resolution required in the last preceding section, embodying a copy of said resolution, shall be served upon the owner of each piece of property to be assessed, said service to be made in the manner provided by this act for serving notices herein required; *provided*, that if any of the owners or persons be not residents of the city of Charleston or if it appears by the return, in any case, that the owner can not be found, then a notice of the passage of said resolution shall be published in some newspaper of general circulation in said city, once a week for two successive weeks, and such notice whether by service or publica-

tion, shall be completed at least three days before said improvement is begun or the assessment is levied, and the return of the officer serving such notice or a certified copy of said return, or where published, the certificate of the publisher of said newspaper, shall be *prima facie* evidence of the service of the notice as herein required. Notice upon infants may be served on their guardian and upon insane persons, by service upon their committee.

Sec. 78. The city of Charleston shall pay the cost of paving the intersections at all cross streets, (but not including the places where private alleys or private crossings cross the sidewalk, which shall be paid by the owner or owners of said private alley or crossing at the time the paving is laid on said crossing); *provided*, that whenever special assessments shall have hereafter been levied and paid under the provisions of this act for any improvement made after this act becomes a law, for the improvement of any street or other public place (other than side walks) the property so assessed shall not again be assessed for more than half of the cost and expense of re-paving or repairing such street or other place unless the grade be changed, but this exception shall not apply to the paving or repairing of streets or other public places which were paved or improved before the passage of this act.

Sec. 79. It shall be lawful for said city of Charleston to issue and sell its bonds as provided in this act, for the sale of other bonds, to pay the city's part of the cost of said improvements as required by this act, and may levy taxes in addition to all other taxes authorized by law, to pay such bonds and interest thereon; *provided*, that the total indebtedness of the city for all purposes shall not exceed five per centum of the total value of all taxable property therein.

Sec. 80. At the expiration of the time for the giving and publication of the notices as provided for in section seventy-seven, the board of affairs shall determine whether it will proceed with the proposed improvement or not, and if it decides to proceed therewith, an ordinance for the purpose shall be passed; said ordinance shall set forth the streets and alleys upon which the abutting property is to be assessed for the improvement, shall contain a statement of the general nature of the improvement, and the character of the materials which may be bid upon therefor; of the mode of payment therefor, a reference to the resolution theretofore passed for said improvement giving the date of its passage and a state-

ment of the intention of the board of affairs to proceed therewith in accordance with said resolution and in accordance with the plans, specifications, estimates and profiles provided for said improvement.

In setting forth the lots and lands abutting upon the improvement it shall be sufficient to describe them as the lots and lands abounding and abutting upon said improvement between and including the termini of said improvement, or by the description by which they are described on the land books of the county of Kanawha, and this rule of description shall apply in all proceedings in which lots or lands are to be charged with a special assessment.

Sec. 81. In any case in which special assessments have been made or shall hereafter be made, upon property for the construction of any improvement authorized by this act or previous statutes, and several kinds of materials have been named in the ordinance or ordinances providing for the same, and on which bids have been received for the construction of said improvements with any, either or all of said materials, said assessments shall be valid and binding assessment upon the property so assessed. In the case of the construction of sewers required under the provisions of this act, notice of the passage of said resolution therefor, as provided for in section seventy-seven of this act, shall be made in the manner provided for in said section of this act.

Sec. 82. No public improvement, the cost or part of the cost of which is to be especially assessed on the owners of property, shall be made without the concurrence of all members of said board of affairs unless the owners of a majority of the foot frontage to be assessed petition in writing therefor, in which event the said board shall be authorized upon the affirmative vote of three members thereof to proceed with the improvement in the manner provided for.

Sec. 83. When the whole or any portion of the improvement authorized by this act passes through or by a public wharf, market space, park, cemetery, structure for the fire department, water works, school building, infirmary, market house, work house, hospital, house of refuge, bridge, gas works, public prison, court house, church or any other public structure or public grounds within said corporation, and belonging to said corporation or to the county, state, or any church, association, or eleemosynary institution, the board of affairs may authorize the proper proportion of

the estimated cost and expense of the improvement to be certified to the clerk of the county court of Kanawha, and it shall be the duty of those persons having charge of the fiscal affairs of any such property or institution to make proper arrangements for the payment of such assessments when due and payable.

Sec. 84. The cost of any improvement contemplated in this act and for which assessments may be made, shall include the cost and expenses of the assessment, the expenses of the preliminary and other surveys, and of printing and publishing all notices, required to be published, and serving notices on property owners, and the cost of constructions and inspection.

Sec. 85. No persons who claims damages, arising from any cause due to or arising out of said improvements, shall commence a suit therefor against the city within sixty days after the completion of the improvements, in order that the board of affairs may take such steps as it may deem proper to settle or adjust the claim; and no person shall bring any action whatever in any court in this state for damages arising out of any of said improvements or change of grade unless he shall have filed with the board of affairs at some time after the publication of the notice provided for in section seventy-seven, and before the time of the introduction of the ordinance providing for said improvement a statement of the damage which, in his opinion, he will sustain by reason of said improvement or the change of grade therefor; which statement shall be duly sworn to and be spread upon the minutes of said board of affairs.

Sec. 86. Proceedings with respect to improvements shall be liberally construed by the board of affairs, and the courts to secure a speedy completion of the work at reasonable cost, and the speedy collection of the assessments after the time has elapsed for their payments, and merely formal objections in such cases shall be disregarded.

Sec. 87. It is especially provided that no bonds shall be issued under the provisions of this act unless and until the question of issuing said bonds shall have first been submitted to a vote of the people of the city and shall have received three-fifths of all votes cast at said election for or against the same. The board of affairs may provide by ordinance for an election every year, at which the question shall be submitted to the people as to whether the city shall be authorized to issue bonds for the purpose and under the provisions of this act, to an amount not to exceed in the ensuing year the

amount recommended by said ordinance for said ensuing year; but the ordinance providing for said election need not specify in detail the location of the improvements contemplated to be paid for during the ensuing year out of said aggregate issue authorized for said year, but before issuing any bonds the board of affairs shall pass separate ordinances for each street or alley to be improved, dealing with all the requirements set forth in section eighty of this act, and notwithstanding the provisions of section two, three and six of chapter forty-seven-a of the code, it shall be sufficient description for the purpose for which said election is held if the ordinance calling the same shall recite that it authorizes the board of affairs of said city to issue bonds for the purpose of grading, paving, sewerage or otherwise improving the streets and alleys of said city, at such times as to the board of affairs shall seem fit during the ensuing year ending on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, to an amount not exceeding in the aggregate during said year the sum of \$\_\_\_\_\_ ; and when the board of affairs shall have once been authorized by a vote of the people to issue bonds for the purpose and to a sum not to exceed the amount set forth in the ordinance calling the said election, no further election shall be necessary for the issuing of bonds during said ensuing year up to the amount stipulated, in said ordinance calling said election, but the board of affairs shall from time to time during said ensuing year by ordinance authorize the issue of said bonds, in such sums and for the improvement of such streets or alleys as to it may seem best, providing the requirements of this act are complied with. The aggregate amount of bonds authorized by said annual election shall not be exceeded during said ensuing year, unless and except the same be authorized by a special election held at a subsequent time in said year and duly called as provided for the calling of the annual bond election.

The provisions of chapter forty-seven-a of the code concerning bond elections, shall, so far as they are not in conflict with the provision of this act, apply to the annual bond elections and special bond elections herein provided for.

#### ARTICLE XX.

##### *Refunding Bonded Indebtedness.*

Sec. 88. The board of affairs may refund the lawful bonded indebtedness of said city by issuing bonds of the city, payable within

twenty years, bearing no greater rate of interest than four per cent, but the indebtedness of said city shall not thereby be increased without the consent of the voters of said city being first had and obtained as provided by law.

Such bonds shall not be sold for less than par nor exchanged for the evidence of said indebtedness of said city, except dollar for dollar, and there shall be provided a sinking fund that will discharge said bonds as they shall become due. Said bonds shall express on their face that they may be paid at any time after five years at the pleasure of the city. A record shall be kept of all proceedings hereunder; *provided*, that nothing herein contained shall be construed to authorize an increase of the bonded indebtedness of said city beyond the amount now authorized by law. Notwithstanding the limitations of this and the other laws of the state of West Virginia relating to the issue of bonds and other indebtedness, the city of Charleston is hereby authorized upon the affirmative vote of three-fifths of all the votes cast at an election held for said purpose, to issue and sell special building bonds for the purpose of providing the necessary funds for purchasing the ground and erecting a new city building, a new central fire station or fire stations, and a city market, or either or any of them; *provided*, that the sum for which said bonds may be issued, together with all other indebtedness of the city (except for sewerage, paving and otherwise improving the streets and alleys), shall not exceed three per centum of the value of the taxable property in said city; and *provided, further*, that no such sale or issue of bonds shall be made so as to cause the total indebtedness of said city for all purposes, including street paving and improvements, sewerage and all other bonds outstanding and hereafter issued, and all indebtedness of said city of any and every nature whatsoever, to exceed in the aggregate five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

## ARTICLE XXI.

### *Hospitals, Libraries, Etc.*

Sec. 89. The board of affairs shall have the authority to erect, buy, sell and lease all buildings necessary for the use of the city government and to provide for and regulate the same, and to estab-



lish and maintain public hospitals, libraries and reading rooms and to purchase books, papers and manuscripts therefor, and to receive donations, gifts, or bequests for the same in trust or otherwise.

#### ARTICLE XXII.

##### *Civil Service Board.*

Sec. 90. For the purpose of making examinations of persons for offices or positions in the police and fire department, and prescribing rules for their conduct, the members of the board of affairs shall act and be known as a civil service board, the mayor being the presiding officer, and the recorder *ex officio* clerk of said board.

The civil service board shall adopt rules for its own government, and cause the minutes of its meetings to be recorded in a book especially provided for that purpose, which shall be kept by the recorder at his office, and open to public inspection. The civil service board shall at least every six months in each year and oftener if it deems it necessary, after ten days' notice to the public, published in two daily newspapers of opposite politics, giving the time and place of meeting, hold examinations for the purpose of determining the fitness and qualifications of applicants for offices and positions in the police department and fire department, which examinations shall be practical and shall fairly test the fitness of the persons examined to discharge the duties of the positions to which they seek appointment; and such examinations and the declaration of the result thereof, shall be made with the aim to secure and maintain an honest and efficient police force and fire department force free from partisan distinction or control. Said board shall at once after each of such examinations place on record in the journal of the civil service board, the results of said examination, giving the names of applicants and their politics and the position sought by them, and their respective percentage based on one hundred. In making such examination the size, weight, intelligence, health, physical appearance, habits, and moral standing and surroundings shall be taken into consideration.

Sec. 91. The members of the fire department and the police department under and by virtue of the ordinances and regulations adopted in pursuance of the provisions of the charter of the city of Charleston as it was on January first, one thousand nine hundred and nine, now in office in the city of Charleston shall remain in office during good behavior.

All persons examined by said civil service board receiving a gen-

eral average of seventy per cent, shall be placed upon an eligible list under separate columns of opposite politics; and hereafter and until such a time as not more than one-half of the members of either department shall belong to one political party, all appointments, whether original or to fill vacancies therein from time to time shall be filled from the party casting the next highest number of votes for its candidate for mayor at the election held on the third Monday in March, one thousand nine hundred and seven and the board shall continue to make such original appointments and to fill such vacancies from the eligible applicants belonging to said minority party, until the number of men in each of said departments belonging to opposite dominant political parties shall be equal or within one of equal if there be an odd number in the department; and, after the number of members belonging to each party shall be equal, then all vacancies thereafter occurring shall be filled by the board, by the appointment of the applicant who has the highest standing on the eligible list and is an adherent of the political party to which the person belonged whose death, resignation or removal caused the vacancy. *Provided*, if at the time any appointment is to be made from the eligible list, the civil service board, in its discretion, may make another examination of such person before making the appointment, and may on such examination change the grade of such applicant for good cause. And, in event of the board making an original appointment it shall be the duty of the board to select the applicant having the highest standing on the eligible list, at all times giving due consideration to the intent and spirit of this act, that the number of men in the police and fire departments belonging to the opposite and dominant political parties shall be equal.

In the event the number of men in either department is not susceptible of being divided by two, then in the event of a vacancy the odd men shall be selected from the political party to which the then mayor belongs.

Sec. 92. No member of the police or fire department shall actively engage in any primary election, convention or election in which any officer in the city, county or state is to be nominated or elected, nor shall any such member, directly or indirectly, give or offer to give, contribute, or offer to contribute, any money or thing of value or profit to any political committee or party organization to be expended in behalf of any political party, nor to any candi-

date or candidates for nomination for or election to any office in the city, county or state. The violation of any of the provisions of this section by any member of the police or fire department, shall be deemed misconduct in office, and any member of the police or fire department who shall be dismissed from the service of the city in the manner and form as prescribed in the next succeeding section for the violation of any of the provisions of this section shall not be eligible to re-appointment to any appointive office in the city.

Sec. 93. All persons now under civil service in the police department and the fire department under this or any previous act shall hold their offices or positions during good behavior and shall not be removed from their said offices or positions except for misconduct or failure or inability or incapacity to perform their duties or for the good of the service.

The board of affairs shall hear and determine all charges against any officer of, or person holding a position in the police department and the fire department, after ten days' written notice to the accused of the charges preferred against him, and of the time and place of a hearing of said charge, and an opportunity to the accused to have been heard, at such meeting, in his defense. After thus hearing said charges the board may, by a vote of three of its members, sustain the same, and by like vote may reprimand, fine or suspend or dismiss said accused person from the service of the city. Upon the making of such charges, and pending trial thereon, the board, by a majority vote, or the mayor when the provocation is great, may suspend the accused officer, and if he be thereafter found guilty on the charges preferred, and by reason thereof dismissed, or suspended, he shall draw no salary during the period of his suspension. The circuit court of Kanawha county is hereby expressly given power to review the findings of the board of affairs in any case of dismissal or suspension of a police officer or fireman upon the petition of the party affected.

### ARTICLE XXIII.

#### *Non-Partisan Administration.*

Sec. 94. The object and aim of this act is to procure an honest and efficient administration of the affairs of the city of Charleston, free from partisan distinction or control; and the municipal authorities of the city and courts of the state shall construe this act with that aim in view.

## ARTICLE XXIV.

*Serving Notice.*

Sec. 95. Whenever any notice is required to be given, or any summons, warrant or other process is required to be served or otherwise executed, under the provisions of this act, it shall be sufficient if such notice, summons, warrant, or other process be executed by an officer of the police department of said city in the same way or manner in which the laws of the state prescribe for executing summonses and subpoenas by state officers, unless otherwise provided by this act.

## ARTICLE XXV.

*Board of Affairs Successors to Council.*

Sec. 96. The board of affairs (together with the council) provided for in this act, and their successors in office, shall be held and deemed, in law and in fact, the successors of the mayor, board of affairs and common council of the city of Charleston.

## ARTICLE XXVI.

*First Election and Present Officers.*

Sec. 97. The first election hereunder shall be held on the third Monday in April, one thousand nine hundred and nine, and the officers then elected shall begin their terms on the first day of May, one thousand nine hundred and nine, and thereafter all elections, except special elections, shall be held on the third Monday of April, in every second year thereafter: and the terms of office of the persons elected shall begin on the first day of May next after such election.

The terms of office of the officers elected on the third Monday in March, one thousand nine hundred and seven, are hereby extended and continued till the first day of May, one thousand nine hundred and nine, and until their successors, under the provisions of this act, shall be elected and qualified. And the terms of office of councilmen elected on the third Monday in March, one thousand nine hundred and eight and of all councilmen appointed to fill the vacancies of any then elected are hereby extended and continued till the first day of May, one thousand nine hundred and eleven, and until their successors, are elected and qualified. For the first election to be held hereunder, the council now in office

shall be a canvassing board to ascertain and disclose the result of said election, to determine and settle ties as herein provided for, and to hear and determine all contests. Thereafter the board of affairs shall act as such canvassing board, with all the powers heretofore vested in the council for that purpose; but the council shall have the right to be present and hear and see the canvass of the result of any election, and for this purpose it may assemble in special session on the day fixed by law to canvass the result of any election; and all the powers concerning elections, the appointment of registrars and election officers heretofore given to the council, or which may hereafter be given to council by general law, are hereby vested in the board of affairs; and whenever one or more members of the board of affairs shall be a candidate for re-election, it shall be the duty of the council to meet and appoint some person or persons, qualified to act on the board of affairs, to serve as such in the appointment of election officers and in canvassing and disclosing the result of any election and in hearing contested election matters and cases, in the place and stead of such member or members so being candidates such person or persons so appointed shall be, in each case a member or members of the same party as the person or persons respectively candidates and in whose place he or they are so appointed; and every person so appointed shall take the oath of office required by section twenty-six before discharging his duties; and in all matters concerning said election thereafter, and the canvassing and disclosing the result thereof and the hearing of contests in relation thereto, such person or persons so appointed shall act in the place and stead of such member or members, so being candidates, and it shall be unlawful for any member of the board of affairs to act as such in any capacity in the appointment of election officers or in ascertaining and declaring the result thereof or in hearing any contest in relation thereto, when such member is a candidate at such election; and anyone violating this section shall be deemed ineligible to the office for which he is a candidate; and if upon application to the board of affairs by any five taxpayers it fails to disclose such ineligibility, then the council shall have power so to do, and if the council shall fail to do so, then the circuit court of Kanawha county shall have power so to do by *mandamus*, prohibition or *certiorari*.

Sec. 98. The recorder, acting under state laws in so far as they are not in conflict with this act, shall perform such duties relating

to all municipal elections held under the municipal authorities of said city, as the clerk of the county court of Kanawha county performs under state laws, in relation to state, county and district election in said county; and he shall likewise be the custodian of all ballots, tally sheets, etc., pertaining to all municipal elections.

*Existing Officers and Ordinances.*

Sec. 99. The mayor, board of affairs, common council and all other officers, agents, and employees of the city of Charleston shall remain in and hold their offices and discharge the duties thereof until the first day of May, one thousand nine hundred and nine, and thereafter until their successors are elected and qualified as provided by this act, and all existing offices not provided for by this act, shall be abolished as of the first day of May, one thousand nine hundred and nine, except this section shall not apply to councilmen elected on the third Monday of March, one thousand nine hundred and eight, and those appointed to fill their vacancies, and firemen and policemen now under civil service who shall hold their offices during good behavior, and shall not be removed from their offices or positions, except as provided in this act.

All valid ordinances and regulations passed and adopted by the council, on or before the first day of April, one thousand nine hundred and nine, and not inconsistent with this act, shall be and remain in full force unless and until repealed, and the council now in office shall continue to exercise its powers as such until the first day of May, one thousand nine hundred and nine, and until the officers elected in one thousand nine hundred and nine shall be qualified.

Sec. 100. All acts in conflict or inconsistent with this act, are, to the extent of any such conflict, hereby repealed.

(Senate Bill No. 37.)

**CHAPTER 3.**

AN ACT to amend and re-enact chapter one hundred and fifty of the acts of one thousand nine hundred and one, incorporating the city of Huntington, as amended by chapter seventy-one of the acts of one thousand nine hundred and three, chapter eight of the acts of one thousand nine hundred and five, and chapter five of the acts of one thousand nine hundred and seven, of the legislature of West Virginia; and to amend and re-enact chapter nine of the acts of one thousand nine hundred and five of the legislature of West Virginia, relating to the paving and macadamizing of the avenues and alleys of said city of Huntington; and to change and enlarge the corporate limits of said city of Huntington so as to include the territory heretofore included in the corporate limits of the city of Central City, and additional territory adjacent thereto, and to consolidate into one act a charter for said city of Huntington as constituted by this act.

(Passed January 26, 1909. In effect March 1, 1909. Became a law without approval of the governor.)

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39. Term of elective offices.
40. Term of appointive offices.
41. Salaries of commissioners and mayor.

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| <p>Sec.<br/>43. Salaries of appointive officers.<br/>44. Salaries of day and other laborers.<br/>45. Duties of appointive officers.<br/>46. Meetings of board commissioners.<br/>47. Special meetings; how called.<br/>48. Vote; how taken.<br/>49. Minutes of regular and special meetings.<br/>50. Meetings of citizens board.<br/>51. Special meetings; method of calling.<br/>52. Witnesses; power to enforce attendance.<br/>53. Majorities constitute quorums.<br/>54. Vacancies in office of commissioners; how filled.<br/>55. Temporary filling of vacancies; taking oath.<br/>56. Absence of officers; how filled.<br/>57. Commissioners may not hold other offices.<br/>58. Appointive officers ineligible to other offices.<br/>59. Purchasing supplies; advertising for bids.<br/>60. Police judge; authority and powers.<br/>61. Franchise ordinances; vote on; limit in sum.<br/>62. Franchise effective; when; power of veto.<br/>63. When ordinance become effective.<br/>64. Veto of franchise; failure to transmit.<br/>65. Tie vote on franchise; how decided.<br/>66. Publication of notice to present franchise.<br/>67. Style of ordinance by board commissioners.<br/>68. Licenses; for what granted; bond required in license for sale of spirituous liquors; power to revoke; license tax on saloon keepers; amount.<br/>69. Nuisances; powers to abate and remove.<br/>70. Owners of improved property; tenants and occupants required to connect same with sewerage system.<br/>71. Sidewalks; construction of; payment for.<br/>72. Taxes; method of levying; separate special levying districts.<br/>73. Annual tax on real estate and personal property; license tax on certain property; addition-</p> | <p>Sec.<br/>al levy.<br/>74. Taxes on real estate lien thereon; manner of enforcing and collecting.<br/>75. Persons and property exempt from taxation.<br/>76. Poll tax on male inhabitants; disposition of funds.<br/>77. Manner of depositing city funds.<br/>78. Paving of streets and construction of sewers.<br/>79. Power to issue bonds for public improvements.<br/>80. Who to pay for improvements; determining assessments.<br/>81. Manner of paying contractors; lien on property.<br/>82. Petitions of property owners asking improvements.<br/>83. Sewer construction; assessments; manner payable.<br/>84. Tax liens on real estate; assessment certificates.<br/>85. Bond issue to pay for paving and sewer construction; three-fifths vote of people necessary.<br/>86. Cost of improvements includes cost of assessment.<br/>87. Lots and lands abutting on improvements.<br/>88. Notice of assessments about to be laid.<br/>89. Civil service board; rules governing; duties.<br/>90. Who eligible to police and fire departments.<br/>91. Term of office in police and fire departments; sexton; charges against officers.<br/>92. Code of laws and ordinances.<br/>93. Non-partisan administration.<br/>94. Serving of notices, summons, warrants, etc.<br/>95. Boards of commissioners and citizens successors to council.<br/>96. Present officers and indebtedness of Central City; provision for.<br/>97. Officers to continue until successors are appointed.<br/>98. Duties of common council of Huntington before act is effective; canvassing board of first election.<br/>99. Existing records and ordinances.<br/>100. Ordinances valid until repealed.<br/>101. Custodian of records of Central City.<br/>102. Town of Guyandotte.<br/>103. Inconsistent acts repealed.</p> |
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*Be it enacted by the Legislature of West Virginia:*

That chapter one hundred and fifty of the acts of one thousand nine hundred and one, incorporating the city of Huntington, as amended by chapter seventy-one of the acts of one thousand nine hundred and three, chapter eight of the acts of one thousand nine hundred and five, and chapter five of the acts of one thousand nine hundred and seven, of the legislature of West Virginia; and that chapter nine of the acts of one thousand nine hundred and five, of



the legislature of West Virginia, relating to the paving and macadamizing of the avenues and alleys of said city of Huntington, be amended and re-enacted, to include the territory heretofore within the corporate limits of Central City, and other territory, and to consolidate into one act a charter for said city of Huntington as constituted by this act, so as to read as follows:

#### ARTICLE I.

##### *The City of Huntington.*

Sec. 1. That part of the county of Cabell included in the limits hereafter mentioned in section two is hereby made a city corporate and body politic by the name of "The City of Huntington," and as such shall have perpetual succession and a common seal, and by that name may sue and be sued, plead and be impleaded, and purchase, lease, sell and hold real and personal property necessary to the purposes of said corporation.

##### *Corporation Limits.*

Sec. 2. The corporation territorial limits of the city of Huntington shall be as follows, to-wit:

Beginning at a stake at low water mark on the Ohio river (southerly side thereof,) about one-half mile above the mouth of Four Pole creek, and at the intersection of the easterly line of the Williams land with said low water mark; thence easterly and up the Ohio river, with low water mark thereof, to its intersection with low water mark of the easterly side of the Guyandotte river; thence southerly, with the low water mark of Guyandotte river with the easterly side thereof, to a point directly opposite the mouth of the Crump branch, a tributary of said Guyandotte river on the westerly side thereof; thence westerly and crossing Guyandotte river to the mouth of said Crump branch; thence southerly with the westerly line of the Isaac Crump lands to what is known as the Military line; thence westerly with said Military line to its intersection with the corporation limits of the city of Huntington as heretofore constituted by chapter one hundred and fifty of the acts of the legislature of one thousand nine hundred and one; thence with said corporation line in a southerly and westerly direction, respectively, to the northerly bank of Four Pole creek; thence in a westerly direction, and down Four Pole creek with the north bank thereof to the intersection of said creek with the southerly line of the right of way of the Chesapeake and Ohio Railway Company; and continu-

ing westerly with said southerly line of said railway right of way to its intersection with the easterly line of the Williams lands; thence northerly, with said easterly line of said Williams land, to the beginning.

#### *Boundaries of Wards.*

Sec. 3. The territory of said city shall be divided into four wards, and such division shall be as follows:

*First ward.* To include the territory lying west of Johnson street (commonly called Johnson Lane), extended in a straight line to the south corporation line.

*Second ward.* To include the territory lying east of the first ward and west of Tenth street extended to the south corporation line.

*Third ward.* To include the territory east of Second ward, and west of Eighteenth street, extended to the south corporation line.

*Fourth ward.* To include all the territory east of the Third ward.

It is provided, however, that the board of commissioners, hereinafter provided for, after the expiration of three years from the time this act takes effect, may by ordinance fix the boundaries and increase the number of wards.

### ARTICLE II.

#### *Municipal Authorities.*

Sec. 4. The municipal authorities of the city of Huntington shall be four commissioners who shall constitute a board of commissioners, (and the citizens board hereinafter provided for in article III) and shall be known as the "Board of Commissioners of the City of Huntington."

#### *Corporate Powers.*

Sec. 5. All the corporate powers of said city shall be vested in and exercised by the board of commissioners, or under its authority, except as otherwise provided in this act.

Sec. 6. The board of commissioners of said city shall have and are hereby granted power to have said city surveyed; to open, vacate, broaden, change grade of, grade and pave streets, sidewalks and gutters for public use, and to alter, improve, embellish and ornament and light the same, and to construct and maintain public sewers and laterals, and shall in all cases have power and authority

to assess upon and collect from the property benefitted thereby such part of the expense thereof as shall be fixed by ordinance, except as hereinafter provided; to have control of all streets, avenues, roads, alleys and grounds for public use in said city, and to regulate the use thereof and driving thereon, and to have the same kept in good order and free from obstruction, pollution or litter on or over them; to have the right to control all bridges within said city, and the traffic passing thereover; to change name of any street, avenue or road within said city, and to cause the re-numbering of houses on any street, avenue or road therein; to regulate and determine the width of streets, sidewalks, roads and alleys; to order and direct the curbing and paving of sidewalks and footways for public use in said city to be done and kept clean and in good order by the owners of adjacent property; to enter into a contract with any internal improvement company for the joint ownership of any bridge by the city and such company, upon such terms as may be prescribed in the contract, but such bridges shall be a public highway, and the interest of the company shall be only such proportionate part thereof as it may pay for; to prohibit and punish the abuse of animals; to restrain and punish vagrants, mendicants, beggars, tramps, prostitutes, drunken or disorderly persons within the city, and to provide for their arrest and manner of punishment; to prohibit and punish by fine the bringing into the city by steamboats, railroads or other carriers, of paupers or persons afflicted with contagious diseases; to control and suppress disorderly houses, houses of prostitution or ill-fame, houses of assignation, and gaming houses or any part thereof, and to punish gaming; to prohibit within said city or within one mile thereof slaughter houses, soap or glue factories and houses of like kind; to control the construction and repair of all houses, basements, walls, bridges, culverts and sewers, and to prescribe and enforce all reasonable regulations affecting the construction of the same, and to require permits to be obtained for such buildings and structures, and plans and specifications thereof to be first submitted to a city architect or building inspector; to control the opening and construction of ditches, drains, sewers, cess-pools and gutters, and to deepen, widen and clear the same of stagnant water or filth, and to prevent obstruction therein, and to determine at whose expense the same shall be done; and to build and maintain fire station houses, police stations and police courts, and to regulate the management thereof; to acquire, lay off, appropriate and control public grounds, squares and parks, either within or

without the city limits as hereinafter defined, and, when the board of commissioners determine that any real estate is necessary to be acquired by said city for any such purpose, or for any public purpose, the power of eminent domain is hereby conferred upon said city, and it shall have the right to institute condemnation proceedings against the owner thereof in the same manner, to the same extent and upon the same conditions as such power is conferred upon public corporations by chapter forty-two of the code of West Virginia of the edition of one thousand nine hundred and six, and as now amended; to purchase, sell, lease or contract for and take care of all public buildings and structures and real estate, including libraries and hospitals, deemed proper for use of such city; and, for the protection of the public, to cause the removal of unsafe walls or buildings, and the filling of excavations; to prevent injury or annoyance to the business of individuals from anything dangerous, offensive or unwholesome; to abate or cause to be abated all nuisances and to that end and thereabout to summon witnesses and bear testimony; to regulate the keeping of gun powder and other combustible or dangerous articles; to regulate, restrain or prohibit the use of firecrackers or other explosives or fireworks and all noises or performances, which may be dangerous, annoying to persons or tend to frighten horses or other animals; to provide and maintain proper places for the burial of the dead and to regulate interments therein upon such terms and conditions as to price and otherwise as may be determined; to provide for shade and ornamental trees and the protection of the same; to provide for the making of division fences; to make proper regulation for guarding against danger or damage from fires; to provide for the poor of the city, and to that end may contract with the proper authorities of Cabell county to keep and maintain the poor or any number thereof, upon terms to be agreed upon; to make suitable and proper regulations in regard to the use of the streets and alleys for streets cars, railroad engines and cars, and to regulate the running and operation of the same so as to prevent injury, inconvenience or annoyance to the public; to prohibit prize fighting, cock and dog fighting; to license, tax, regulate or prohibit theaters, circuses, the exhibition of showmen and shows of any kind and the exhibition of natural or artificial curiosities, caravens, menageries, and musical exhibitions and performances, and other things or business on which the state does or may exact a licens tax; to organize and maintain fire companies and to provide

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necessary apparatus, engines and implements for the same; to regulate and control the kind and manner of plumbing and electric wiring for the protection of the health and safety of said city; to levy taxes on persons, property and licenses; to license and tax dogs and other animals, and regulate, restrain and prohibit them and all other animals and fowls running at large; to provide revenue for the city and appropriate the same to its expenses; to adopt rules for the transaction of business and for its own regulation and government; to promote the general welfare of the city and to protect the persons and property of citizens therein; to regulate and provide for the weighing of produce and other articles sold in said city, and to regulate the transportation thereof, and other things through the streets: to have the sole and exclusive right to grant, refuse or revoke any and all licenses for the carrying on of any business within said city on which the state exacts a license tax; to establish and regulate markets and to prescribe the time for holding the same, and what shall be sold in such market, and to acquire and hold property for market purposes; to regulate the placing of signs, bill-boards, posters and advertisements in, on or over the streets, alleys, sidewalks and public grounds of said city; to preserve and protect the peace, order and safety and health of the city and its inhabitants, including the right to regulate the sale and use of cocaine, morphine, opium and poisonous drugs; to appoint and fix the places of holding city elections; to erect, own, lease, authorize or prohibit the erection of gas works, telephone plant, electric light works or water works, or ferry boats, in or near the city, and to operate the same and sell the products or services thereof, and to do any and all things necessary and incidental to the conduct of such business: including the right in any franchise hereafter granted, to fix and change the charges and prices for which the service or article of the person or company operating any such plants or works, or any other public utilities or public service corporation under such future franchise may be had by their patrons or consumers; to build, hold, purchase, own and operate toll bridges; to provide for the purity of water, milk, meats and provisions offered for sale in said city, and to that end provide for a system of inspecting the same and making and enforcing rules for the regulations of their sale, and to prohibit the sale of any unwholesome or tainted milk, meats, fish, fruit, vegetables, or the sale of milk containing water or other things not constituting a part of pure milk; to provide for inspecting dairies and slaughter houses, whether in or out-

side of the city, where the milk and meat therefrom are offered for sale within said city; to prescribe and enforce ordinances and rules for the purpose of protecting the health, property, lives, decency, morality and good order of the city and its inhabitants, and to protect places of divine worship in and about the premises where held, and to punish violations of such ordinances even if the offense under and against the same shall constitute offenses under the law of the state of West Virginia or the common law; to provide for the employment and safe keeping of persons who may be committed in default of the payment of fines, penalties or costs under this act, who are otherwise unable or fail to discharge the same, by putting them to work for the benefit of the city upon the streets or other places provided by said city, and to use such means to prevent their escape while at work as the board of commissioners may deem expedient; and the board of commissioners may fix a reasonable rate per day as wages to be allowed such person until the fine and costs against him are thereby discharged; to compel the attendance at public meetings of the members of the board of commissioners; to have and exercise such additional rights, privileges and powers as are granted to municipalities by chapter forty-seven of the code of West Virginia of the edition of one thousand nine hundred and six. For all such purposes, except that of taxation, the board of commissioners shall have jurisdiction, when necessary, for one mile beyond the corporate limits of said city, excepting any other municipal corporation or part of any other state within said one mile limit. Said city of Huntington as constituted by this act, shall retain, keep and succeed to all rights, privileges, property, interest, claims and demands heretofore acquired by, vested in or transferred to said city of Huntington and said city of Central City, as heretofore constituted.

And the board of commissioners shall have the right to establish, construct and maintain landings, ferries, wharves, and docks on any ground which does or shall belong to said city, or which it shall acquire, and to sell, lease, repair, alter, or remove any such landings, ferries, wharves, buildings or docks which have been or shall be so constructed, and to levy and collect reasonable duty on vessels and other crafts coming to or using said landings, ferries, wharves, docks and buildings, and to preserve and protect the peace and good order at the same, and regulate the manner in which they shall be used; and to have the sole right, under state laws and in the same manner as now control county courts, to establish, construct, main-

tain, regulate and control all such wharves, docks, ferries and landings within the corporate limits of said city.

To carry into effect these enumerated powers and all others powers conferred upon said city expressly or by implications in this and other acts of the legislature, the board of commissioners of said city shall have the power, in the manner herein prescribed, to adopt and enforce all needful orders, rules and ordinances not contrary to the laws and constitution of this state; and to prescribe, impose and enforce reasonable fines and penalties, including imprisonment, and, with the consent of the county court of Cabell county entered of record, shall have the right to use the jail of said county for any purpose necessary to the administration of its affairs.

### ARTICLE III.

#### *Citizens Board.*

Sec. 7. The city of Huntington shall have an additional board to that provided in section four of this act, to be known and styled the "Citizens Board of the City of Huntington," and which shall be comprised of sixteen persons from each ward of the city, and who shall be voted for and elected by the voters of each ward respectively, and in the manner hereinafter prescribed.

Sec. 8. The citizens board shall, at its first meeting after a majority of the newly elected members thereof shall have qualified, elect one of its members president of the body, whose term of office shall run with the term of the members of the body electing him.

Sec. 9. The city clerk shall be *ex officio* clerk of the citizens board, and shall perform such duties pertaining thereto as the board may require of him.

Sec. 10. Whenever a majority of the newly elected members of the citizens board shall have qualified, they shall enter upon the duties of their offices, as a body, and supercede all the former members of said board.

Sec. 11. If any person elected to the citizens board fail to qualify as herein provided within sixty days after his said election, or shall after having qualified, resign from the board, or move from the city, his office shall be vacated, and the citizens board shall, by a majority vote of the members voting thereon, fill such vacancy for the unexpired term with some person from the same ward and of the same political party as the person whose vacancy of office is being filled.

Sec. 12. The citizens board, shall, likewise by a majority vote of

the members voting thereon, fill any vacancy in the office of president of its body by electing another member of the board to the office of president for the unexpired term.

*Powers of Citizens Board.*

Sec. 13. The right of veto on any franchise or ordinance passed by the board of commissioners is hereby conferred upon the citizens board, in the manner prescribed in article XII of this act. Such veto shall be by a majority vote of all the members elected to said board, (except as prescribed in section seventy-three of this act), and the vote thereon shall be taken by roll call of the members and entered of record in the minutes of the meeting.

Sec. 14. The citizens board shall have the right to hear, consider and act on charges against any member of the board of commissioners, and, after having heard proof of such charges, may remove such commissioner and declare his office vacant by two-thirds of all the members elected on said board, and the vote thereon shall be by roll call of the members and entered of record in the minutes of the meeting. But before such commissioner shall be put to trial on said charges, he shall have at least ten days' written notice of the nature of said charges, and the time and place of a hearing thereon before said citizens board. If the citizens board, after hearing of said charges, shall remove said commissioner from office, thereby declaring a vacancy in his said office of commissioner, it shall through its president or otherwise, cause its action thereabout to be at once certified to the board of commissioners.

Sec. 15. No commissioner shall be removed from his office except for one of the causes mentioned in section six of article IV of the constitution of West Virginia.

Sec. 16. The citizens board shall make proper rules for its government not contrary or inconsistent with any of the provisions of this act or the authority vested in the board of commissioners; and it shall cause a record of its meetings and proceedings to be kept and recorded by its clerk in a well bound book, which shall remain in the custody and at the office of the city clerk open to public inspection. The minutes of the meeting and proceedings of said board, after recordation and when signed by its president, shall be admitted as evidence in any court of record in this state.

ARTICLE IV.

*Departments of City Government.*

Sec. 17. In order to better dispatch the business of the city, and



assign more in detail the duties of the members of the board of commissioners, the government of said city is hereby divided into four departments, to-wit:

Department of Fire, Police, and Law.

Department of Finance, Taxation and Public Utilities.

Department of Streets, Sewers, Wharf, Public Buildings and Grounds.

Department of Health and Charity.

Sec. 18. The mayor, at the first regular meeting of the board of commissioners following their election and qualification, shall designate himself and each of the other commissioners at the head of one of the said departments of government, and the commissioner thus assigned shall be styled the commissioner of that department, to-wit:

“Commissioner of Fire, Police and Law.”

“Commissioner of Finance, Taxation and Public Utilities.”

“Commissioner of Streets, Sewers, Wharf, Public Grounds and Buildings.”

“Commissioner of Health and Charity.”

and he shall have the immediate care and supervision of his department, but subject always to the control of the board of commissioners. The business, and the labors incident thereto, of each of the departments shall be that which properly falls within the scope of the particular department, but which, in details, may be fixed from time to time by the board of commissioners. The head of each department shall see to the performance of all business coming within his department, or which may be referred thereto, or to any officer thereunder, from time to time. And the commissioner of health and charity, as a part of his duties, shall establish and maintain a free employment bureau.

Sec. 19. The commissioner of each department shall keep a public office at which he may be found or communicated with during stated hours to be fixed by him for the convenience of the public, unless his official duties call him elsewhere.

## ARTICLE V.

### *Mayor.*

Sec. 20. The commissioner receiving the greatest number of votes at the general election for members of the board of commissioners shall, by reason thereof, be the mayor of the city.

Sec. 21. If two or more commissioners shall receive an equal number of votes at such election they shall decide by casting lots which of them shall be mayor, and until such decision shall have been made the city attorney shall be the acting mayor of the city with the powers and duties and salary of mayor while he so acts, except he shall not vote on any question arising or coming before the board of commissioners.

Sec. 22. A vacancy in the office of mayor shall be filled for the unexpired term by the board of commissioners by the election thereof of some member of their board; *provided*, that if such appointment be made at a time when there is also a vacancy on the board of commissioners, said appointment shall hold only until the vacancy on the board of commissioners shall have been filled when the full membership of the board of commissioners shall appoint some member of its board to the office of mayor for the unexpired term.

Sec. 23. The mayor shall have and exercise all the rights, powers and duties of mayor conferred by the constitution and laws of this state, and all those conferred by the terms of this act, and no other. He shall be the presiding officer of the board of commissioners, and he, in the capacity of commissioner, shall have the right to vote on any question arising before the board, but he, in the capacity of presiding officer of the board, shall not have any vote by which to decide a question on which there is a tie vote. He shall be the executive officer of the city, and shall see, except as herein otherwise provided, that the laws and ordinances of the city and resolutions and orders of the board of commissioners are enforced, and that the peace and good order of the city are preserved, and that the persons and property therein are protected. He shall perform such other duties, if they be not inconsistent with the duties of the office of mayor or commissioner, as the board of commissioners may from time to time prescribe.

## ARTICLE VI.

### *Additional Officers.*

Sec. 24 In addition to the municipal authorities mentioned in section four of this act, said city shall have a city clerk, treasurer, auditor, police judge, city attorney, chief of police, chief of fire department, city engineer, health officer, and such other officers and agents as the board of commissioners may from time to time create or employ. The election of all appointive officers named or pro-

vided for in this section shall be vested in the board of commissioners.

#### ARTICLE VII.

##### *Qualification of Voters.*

Sec. 25. Every person qualified by law to vote for members of the legislature of the state, and who shall have been a resident of said city for sixty days, preceding the day of election, and a *bona fide* resident of the election precinct in which he offers to vote, shall be entitled to vote at all elections held in said city by or under the corporate authorities thereof.

##### *Registration of Voters.*

Sec. 26. The board of commissioners shall by ordinance provide for such regulations for the registration of voters as may be rendered necessary by state laws.

#### ARTICLE VIII.

##### *Nomination of Candidates.*

Sec. 27. Candidates to be voted for at any municipal election for members of the board of commissioners and members of the citizens board may be nominated by convention, primary or petition in the manner and under the provisions now or hereafter prescribed by state laws relating thereto.

*Provided, however,* that no political party shall nominate more than three persons for the office of members of the board of commissioners, no two of whom shall be from the same ward, and no more than eight persons in each ward of the city for the office of members of the citizens board. If any certificate of nomination, or any petition for nomination, of candidates for either the board of commissioners or the citizens board shall contain more names than prescribed in this section for such office, then the ballot commissioners shall take the first three names for board of commissioners and the first eight names for citizens board as the nominees of such party for said respective offices. And, *provided, further,* that there shall not be printed on any ticket on any ballot to be voted at any municipal election for the election of officers of the city more than three names for the office of members of the board of commissioners nor more than eight names for the office of members of the citizens board.

Sec. 28. In case of the nomination of candidates to be voted for

to fill vacancies on the board of commissioners, no political party shall nominate more than double the number to be elected and such nominations shall be certified, and the names of the nominees printed on the ballot, in the manner prescribed in section twenty-seven herein.

Sec. 29. Every person so nominated for the office of commissioner shall, within five days after his nomination has been certified by the political party making the nomination or a petition therefor shall have been filed, make, under oath, and file with the city clerk a statement of the political party to which he claims allegiance; and, if nominated by two or more parties, he shall state to which of them he belongs. If such person fail to make the oath, and file the same, as herein prescribed, the ballot commissioner shall not place his name on the ballot to be voted at the approaching election.

#### ARTICLE IX.

##### *Election of Officers.*

Sec. 30. On the second Tuesday of May, one thousand nine hundred and nine, and on the same day in every third year thereafter, there shall be elected by the qualified voters of the whole city four commissioners, who shall hold their offices from the time of their qualification on and from the first Monday of the next succeeding June for the term of three years, and until their successors are elected and a majority thereof shall have qualified.

Sec. 31. At the same election at which commissioners shall be elected, there shall also be elected, by the qualified voters of each ward of the city, sixteen members of the citizens board who shall, at the time be residents of the ward from which they are elected, and who shall hold their offices from the time of their qualifications on and from the first Monday of the next succeeding June for the term of three years, and until their successors are elected and a majority thereof shall have qualified.

Sec. 32. No person shall be eligible to the office of commissioner or member of the citizens board except he be a citizen entitled to vote at the election at which commissioners are elected.

Sec. 33. Not more than two persons whose names appear on any ticket of the ballot being voted at an election for members of the board of commissioners shall be elected to said office. The four candidates receiving the greatest number of votes shall be declared elected; *provided*, that not more than two of the four candidates receiving the greatest number of votes shall be of the same political

party, and if more than two candidates of the same political party receive the greatest number of votes, then the two of such party receiving the greatest number of votes shall be declared elected, and the votes for the other candidates of said party for said office shall be disregarded and the two candidates of other political parties voted for at said election who receive the next greatest vote shall be declared elected; *provided, further*, that if the name of any such candidate be printed on more than one ticket of the ballot, he shall be considered the candidate of the party on which ticket he received the greatest number of votes at said election; and in order to ascertain that fact, the election officers, and the board of canvassers, shall make and keep a separate tally of the votes cast for such candidate on each ticket on which his name appears.

Sec. 34. If two or more candidates receive an equal number of votes, for commissioner or member of the citizens board, the canvassing board, before whom said election returns shall have been canvassed, shall decide between them according to the provisions and intent of this act as to eligibility of candidates and political parties and tickets to which they belong.

Sec. 35. Not more than eight persons whose names appear on the ticket of any party being voted at an election for members of the citizens board shall be elected to said office. The sixteen candidates receiving the greatest number of votes shall be declared elected; *provided*, that not more than eight of the sixteen candidates receiving the greatest number of votes shall be of the same political party.

Sec. 36. All elections of whatsoever kind, held under this act shall be conducted, returned and the result thereof ascertained and declared in the manner prescribed by the laws of the state relating to elections in so far as they are not in conflict or inconsistent with the provisions of this act.

#### *Contested Elections.*

Sec. 37. All contested elections shall be heard and decided by the board of commissioners for the time being, and the contest shall be made and conducted in the same manner as provided for in such contests for county and district offices; and the board of commissioners shall conduct its proceedings in such cases as nearly as practicable in conformity with the proceedings of the county court in such cases.

*Oaths of Officers.*

Sec. 38. All officers elective, and appointive, shall make oath, before some one authorized to administer oaths, that they will support the constitution of this state, and will faithfully and impartially discharge the duties of their respective offices; to the best of their skill and judgment; that they will not administer their respective offices with the aim to benefit any political party; and, in the case of commissioners, they shall add in their oath that they will not during their term of office become pecuniarily interested directly or indirectly, in any contract with the city, or the purchase of any supplies therefor. When the officer shall have made such oath in writing and filed the same with the city clerk, and shall have given the bond required of and accepted from him, he shall be considered as having qualified for the office to which he was elected or appointed; *provided*, that if any person elected to the office of commissioner shall not qualify for said office as herein prescribed within ten days after he shall have been officially declared elected thereto, said office shall *ipso facto* become vacant, and said vacancy shall be filled in the manner provided for in this act.

*Bond of Officers.*

Sec. 39. Each member of the board of commissioners, and the city clerk, treasurer, auditor, city attorney, city physician, chief of police, chief of fire department, shall, before entering upon the discharge of their duties, give an official bond, conditioned for the faithful performance of their respective duties as prescribed in this act or any ordinance now or hereafter passed, in amounts as follows: Each commissioner, five thousand dollars; the treasurer, sixty thousand dollars; the auditor, two thousand dollars; the city clerk, three thousand dollars; the city attorney, city physician, chief of police, and the chief of the fire department, each, one thousand dollars.

The board of commissioners may require additional bond from any of said appointive officers, and may likewise require a bond in whatever sum they may fix, of any other appointive officer. All bonds of appointive officers shall, before their acceptance, be approved by the board of commissioners; and the bonds of the commissioners shall be approved by the retiring board of commissioners. (common council in the first instance). All other bonds of whatever kind shall not be accepted until first approved by the board of commissioners. The minutes of the meeting of the board shall

show all matters touching the consideration or approval of all bonds, and when said bonds are approved and accepted they shall be recorded by the city clerk in a well bound book kept by him at his office for that purpose, which book shall be open to public inspection; and the recordation of such bonds as aforesaid shall be *prima facie* proof of their correctness, and they, as so recorded, shall be admitted as evidenced in all the courts of this state. The city clerk shall be the custodian of all bonds, except those given by him, and as to them the city treasurer shall be custodian.

All bonds, obligations or other writing taken in pursuance of any provisions of this act shall be made payable to "The City of Huntington," and the respective persons, and their heirs, executors, administrators and assigns bound thereby, shall be subject to the same proceedings on said bonds, obligations and other writings, for enforcing the conditions of the terms thereof, by motion or otherwise, before any court of record held in and for the county of Cabell, that collectors of county levies and other sureties are or shall be subject to on their bonds for enforcing the payment of the county levies.

#### *Term and Salary of Officers*

Sec. 40. The term of office of a member of the board of commissioners and a member of the citizens board shall be for three years commencing on the first Monday of June next after the general election and ending on the Sunday next before the first Monday of June in the third year thereafter, and until their successors are elected and qualified.

Sec. 41. All appointive officers (except those under civil service) shall hold for the term of three years (unless sooner removed by and at the pleasure of the board of commissioners), and until their successors are appointed and qualified.

Sec. 42. The salary of the commissioners shall be fifteen hundred dollars each per annum, payable monthly as their services shall have been rendered; but the commissioner who shall be designated mayor shall receive three hundred dollars in addition to his salary as commissioner, which shall be paid monthly as his services shall have been rendered. *Provided, however,* that whenever the United States census of said city shall show its population to be as much as twenty thousand people, then each commissioner's salary shall be advanced to eighteen hundred dollars; and thereafter no advance in their salary shall be made except by an ordinance passed by the

board of commissioners making such advance, which in no event shall exceed two thousand five hundred dollars, and which shall be subject to the veto of the citizens board, as provided in section thirteen of this act: and *provided, further*, that if the board of commissioners fail or refuse to make their appointments of all appointive officers for a period of thirty days, said commissioners thereafter and until such appointments shall have been made, shall forfeit their salary; and the mayor, city clerk and treasurer shall take official notice of such failure to fill said appointive offices and shall not issue any order for nor otherwise pay to the commissioners their salary for the period of their failure to make said appointments.

Sec. 43. The board of commissioners may, by ordinance, fix the salaries of all appointive officers, which shall be subject to the veto of the citizens board, as provided in section thirteen.

Sec. 44. Laborers by the day and those doing special work may be paid by the board of commissioners without fixing the price therefor by ordinance.

#### *Duties of Appointive Officers.*

Sec. 45. The duties, in addition to those prescribed herein, of all appointive officers named or authorized in this act shall be prescribed by the board of commissioners.

### ARTICLE X.

#### *Meetings of Board of Commissioners.*

Sec. 46. The board of commissioners shall meet at some place provided for that purpose at least once each week, on a stated day and at an hour fixed by ordinance or rules governing the board.

Sec. 47. Special meetings of the board may be called by the mayor or any two members of the board by personal notice given to the other members thereof, and like notice to the public through and by at least one publication in two daily newspapers of the city of opposite politics, stating the time and object of the meeting; and no business, except that stated in said notice, shall be considered or acted upon at said meeting. All meetings of the board shall be open to the public.

#### *How Vote Taken:*

Sec. 48. The vote upon any question or motion before the board of commissioners may be *viva voce* when unanimous; but if the



question or motion does not receive the unanimous vote of the members present, then the vote shall be taken by roll call of the members and made a part of the minutes of the meeting; and when the vote is unanimous the minutes shall so state.

*Minutes of the Meetings.*

Sec. 49. The city clerk shall be *ex officio* clerk of the board of commissioners. Said board shall cause detailed minutes of its meetings and proceedings to be kept by the city clerk in a well bound book for that purpose, which shall remain in the custody of the city clerk at his office and open to public inspection. The minutes of every regular or special meeting shall be read publicly at the next regular meeting of the board, and, after being corrected, shall be signed by the mayor and city clerk, and, if thus recorded and signed, they shall be admitted as evidence in any court of record in this state.

*Meetings of the Citizens Board.*

Sec. 50. The citizens board shall meet on the first Monday of each month, at an hour and at the place to be fixed by it by the rules governing its body.

Sec. 51. Special meetings of the citizens board may be called by its president, or any ten members thereof, or by the board of commissioners, or by the mayor, by notice published in two daily newspapers of the city of opposite politics, on three successive days, stating the time and object of the meeting. The holding of a special meeting of the citizens board shall be *prima facie* evidence that the said notice required therefor was given as prescribed in this section.

*Attendance of Witnesses, Punishing Contempts, Etc.*

Sec. 52. The board of commissioners and the citizens board in the exercise of their respective powers and the performance of their respective duties, as prescribed by this act and by the laws of the state, shall have the power to enforce the attendance of witnesses, the production of books and papers, and the power to administer oaths in the same manner and with like effect, and under the same penalties, as notaries public, justices of the peace and other officers of the state authorized to administer oaths under state laws; and said board of commissioners and said citizens board shall have such power to punish for contempts as is conferred on county courts by section thirteen of chapter thirty-one of the code. All process

necessary to enforce the powers conferred by this act on the board of commissioners and citizens board shall be signed by the mayor (or acting mayor) and the president of the citizens board, respectively, and shall be executed by any member of the police force.

*Quorum.*

Sec. 53. A majority of the members of the board of commissioners and a majority of the members of the citizens board shall be necessary for the transaction of business before said respective boards.

*Filling Vacancies in Office of Commissioner.*

Sec. 54. Whenever a vacancy, from any cause whatever, shall occur in the office of commissioner, and the time for a regular municipal election, as provided for in section thirty herein, is not within six months therefrom, then the board of commissioners shall call a special election at which the qualified voters of the city shall fill such vacancy by the election of some person thereto; but the person so elected must be eligible to hold said office and shall not be of the same political party or of the same political faith as any two commissioners who at the time hold the office of commissioner. Such special election shall be governed by the laws of the state relating to elections and as prescribed in this act for regular elections.

Sec. 55. If there shall occur at any one time two or more vacancies on the board of commissioners the citizens board, by a majority vote of all the members elected thereto, shall fill such vacancies for the time being, but the person so appointed shall be of the same political party as the commissioner whose office was vacated and is being filled; and in no event shall such appointments be made so as to give any political party a majority on the board of commissioners.

*Provided,* before any such appointment shall become final the person so appointed shall make and file the oath required by section twenty-nine of this act: and after the filing of said oath the citizens board may, if it so elects, by a majority vote of all members elected thereto, recall said appointments, or any one thereof, and such appointment from that time shall be void and of no effect, and the vacancy caused thereby shall be filled in the same manner and under the condition prescribed in the first instance.

Commissioners thus appointed by the citizens board to fill vacancies on the board of commissioners shall, before entering upon

the discharge of their duties. take the oath required of other officers of the city, but they shall not be required to give any official bond; and they shall hold their said offices only until their successors shall have been elected and qualified as prescribed in section fifty-four of this act.

#### *Absence of Officers.*

Sec. 56. When any member of the board of commissioners or any appointive officer of the city shall from sickness or other cause be unable, for a short space of time, to attend to the duties of his office, the board of commissioners, in case of the absence of a commissioner, may designate another commissioner to attend to the duties of such absent commissioner in addition to the duties already devolving upon him in the capacity of commissioner; and, in case of the absence of any appointive officer, the board may appoint some other officer of the city or other person to perform the duties of such officer, during his absence, either with or without the salary, in whole or in part, of such absent officer.

#### *Cannot Hold Any Other Office.*

Sec. 57. The members of the board of commissioners shall not hold any other city office, except as prescribed in this act, nor be an employee of the city in any other capacity with a compensation, nor hold any other office or position, with or without compensation, which may interfere with the faithful discharge of their duties as commissioner.

Sec. 58. No appointive officer of the city shall hold two official offices with the city at the same time, nor shall become the employee of the city in any other capacity, without first having the consent of the board of commissioners.

#### *Purchasing Supplies.*

Sec. 59. The board of commissioners shall purchase all the supplies for the departments of the city government at the lowest price possible considering the quality and grade of the supplies desired. And, when practicable, the board shall advertise by reasonable notice in at least two daily newspapers of opposite politics, for bids on supplies to be furnished, and shall award contract therein (unless all bids are rejected) to the lowest bidder, taking from such bidder a written contract and bond therein, to be approved by the board, for the faithful performance of said contract.

## ARTICLE XI.

*Police Judge and Other Officers.*

Sec. 60. All persons elected or appointed to the offices named in this act shall be conservators of the peace within said city, and they, and any other officer provided for under this act, may be given authority of police officers by the board of commissioners.

The police judge shall be *ex officio* a justice of the peace, with authority to issue warrants or other process for all offenses committed within the police jurisdiction of the city of Huntington of which a justice of the peace has jurisdiction under the state laws, and for all violations of any city ordinances; in order to preserve the peace and good order of the city, and protect the persons and property therein, riotous and disorderly persons in the city may be arrested and detained before issuing any warrant therefor. The police judge may without fees or other compensation commit persons charged with felony or misdemeanor to jail or take bond for their appearance before the grand jury of the circuit court or criminal court of Cabell county; and he shall have power to issue executions for all fines, penalties and costs imposed by him. And he may require the immediate payment thereof, and, in default of such payment, may commit the person so in default to jail until the fine and penalty and costs shall be paid or satisfied, and to be employed during imprisonment as provided by this act. If any person is sentenced to imprisonment, or any person or corporation is assessed with a fine of ten dollars or more, such person or corporation shall be allowed an appeal from said decision of the police judge to the criminal court of Cabell county upon the execution of an appeal bond, with surety deemed sufficient by the police judge, in a penalty double such fines and costs, conditioned that the person proposing to appeal will perform and satisfy any judgment which may be recorded against him by the criminal court on such appeal, and in no case shall a fine of less than ten dollars be given by the police judge if the defendant, his agent or attorney demand that such fine be made as much as ten dollars. If such appeal be taken the warrant of arrest, the transcript of the judgment, the appeal bonds and other papers of the case shall be forthwith delivered by the police judge to the clerk of the criminal court, and said criminal court shall proceed to try the case as upon indictment or presentment and render such judgment, including that of cost, as the law and evidence may demand.

## ARTICLE XII.

*Vote on Franchises, Ordinances, Officers, Etc.*

Sec. 61. No franchise or ordinance shall be passed, and no contract shall be awarded nor any money appropriated for any one purpose in a greater sum than twenty-five dollars, and no appointment of any officer shall be made, nor any vacancy in office declared, without the affirmative vote of at least three members of the board of commissioners.

Sec. 62. When any franchise shall have passed the board of commissioners it shall not become effective until after the next regular meeting time of the citizens board, or a special meeting time of said body called to act on such franchise, and not then if said citizens board at such meeting time expresses its veto to said franchise, as provided in section thirteen of this act.

Sec. 63. If any ordinance passes the board of commissioners it shall become and remain effective as therein prescribed, unless vetoed by the citizens board at its next regular meeting time, or special meeting time called to act on said ordinance.

Sec. 64. Whenever the citizens board shall express its veto of any franchise or ordinance passed by the board of commissioners, it shall, not later than the second day thereafter, cause such franchise or ordinance with its veto thereof and its written reasons therefor, addressed to the board of commissioners, to be transmitted to the city clerk, and the city clerk shall submit the same to the board of commissioners, at its next regular meeting, or special meeting called for that purpose, which shall be noted in the minutes of said meeting; but a failure to transmit such franchise or ordinance within said time shall not render such veto void. If the franchise or ordinance shall be changed and again passed by the board of commissioners it shall be treated as a new or original ordinance and subject to the veto power of the citizens board.

Sec. 65. If there shall be a tie vote on the passage of any franchise before the board of commissioners, the mayor shall at once transmit such franchise, with a written statement of the vote on the passage of the same before the board of commissioners was a tie, to the president of the citizens board, who shall lay the same before said citizens board at its next regular meeting time thereafter, or prior special meeting time called for that purpose. If upon consideration of said franchise by the citizens board a majority of all the members elected to said citizens board shall vote for the passage of

said franchise as transmitted from the board of commissioners, it shall be considered passed and adopted, and shall become effective as prescribed by the terms thereof.

The citizens board, through its president or otherwise, after the expiration of the time for the consideration of said franchise, shall at once transmit the same, with the action of the citizens board, if any, addressed to the board of commissioners, to the city clerk, who shall call the same to the attention of the board of commissioners at their next regular meeting, or special meeting called for the purpose, at which shall be noted in the minutes the action of the citizens board on said franchise.

Sec. 66. Publication of notice to present franchise, and other preliminaries prescribed by the laws of the state relating thereto, shall be had in the manner prescribed by state laws, before the board of commissioners shall act on any such franchise; but the passage of any franchise shall be *prima facie* proof that such notice was given as prescribed by law.

The word "franchise," whenever used in this act, shall include every special privilege in, under and over the streets, highways and public grounds of the city which does not belong to the citizens generally by common right.

Sec. 67. The style of any ordinance enacted by the board of commissioners shall be, "Be it ordained by the Board of Commissioners of the city of Huntington."

### ARTICLE XIII.

#### *Licenses.*

Sec. 68. Concerning anything for which a state license is required to be done within the said county, the board of commissioners may require a city license therefor, and may impose a tax thereon for the use of the city; and the board of commissioners shall have the power to grant, refuse or revoke any such license of owners or keepers of hotels, carts or wagons, drays, and every other description of wheeled carriages kept or used for hire in said city, and to levy and collect tax thereon and to subject the same to such regulations as the interest and convenience of the inhabitants of said city, in the opinion of the board of commissioners, may require. No license to sell strong or spirituous liquors, or wine, ale, beer, porter, or drinks of like nature, within the said city, or within one mile of the corporate limits thereof, excepting any other municipal corporation which may lie within said limit, shall be grant-

ed by the county court of the county of Cabell; but the board of commissioners of said city shall, under the state laws, have the power to grant, refuse or revoke any such license within the corporate limits thereof; *provided, however*, that the said board of commissioners of said city shall not grant more than one license to every one thousand inhabitants of the said city of Huntington. The board of commissioners shall require from the person so licensed a bond, with approved security, payable to said city in such penalty, and with such conditions as it may think proper, and may revoke such license at any time if the condition of the bond is broken; and the board of commissioners shall have authority to subject any person or persons, who without having paid the tax imposed by the board of commissioners for the privilege, shall do any act or follow any employment of business in the said city upon which the said board is or shall be authorized to impose a tax, to any fine or imprisonment which it is or may be authorized to impose or inflict for the enforcement of its ordinances.

*Provided, further*, that the board of commissioners under limit hereby made shall not fix the license tax on saloon keepers at less than seven hundred dollars.

#### *Nuisances.*

Sec. 69. The board of commissioners of said city shall have authority to abate and remove all nuisances in said city. It may compel the owners, agents, assignees, occupants or tenants, of any lot, premises, property, building or structure, upon or in which any nuisance may be, to abate and remove the same by orders therefor, and by ordinance provide a penalty for the violation of such orders.

Said board of commissioners may also by its own officers, appointees and employees abate and remove nuisances. It may by ordinance regulate the location, construction, repair, use, emptying and cleaning of all water closets, privies, cess-pools, sinks, plumbing, drains, yards, pens, stables, and other places, where offensive or dangerous substances or liquids are, or may accumulate, and provide suitable penalties for the violation of such regulations, which may be enforced against the owner, agents, assignee, occupant or tenant, of any premises or structure where such violation may occur.

If the owner, agent, tenant, assignee, or occupant, of any such premises, lot, property, building or structure, as is mentioned herein, shall fail or refuse to abate or remove any such nuisance, as

mentioned herein, or to comply with the provisions of any such ordinance, and the regulations herein contained, the said board of commissioners may have said nuisance abated or the provisions of said ordinance or ordinances carried out, after reasonable notice to said owner, occupant, tenant, agent or assignee of its intentions so to do, and collect the expense thereof, with one per centum per month interest added from the date of said notice, from the said owner, occupant, tenant, agent or assignee, by distress or sale, in the same manner in which taxes levied upon real estate for the benefit of said city are herein authorized to be collected, and the expense shall remain a lien upon said lot, or part of lot, the same as taxes levied upon real estate in said city; which lien may be enforced by a suit in equity before any court having jurisdiction, as other liens against real estate are enforced. In case of non-resident owners of real estate such notice may be served upon any tenant, occupant, assignee, or rental agent, or by publication thereof for not less than two consecutive weeks in two newspapers of opposite politics, published in said city.

And in all cases where any tenant, occupant or agent is required to abate and remove any nuisance under the provisions of this section, or comply with the provisions of any such ordinance as is mentioned herein, the expense thereof may be deducted out of the accruing or accrued rent of said property, or amount due said owner from said agent, and such tenant, occupant or agent may recover the amount so paid from the owner, unless otherwise especially agreed upon.

Any expense incurred by the board of commissioners as herein provided, in the manner aforesaid, may be collected in the manner herein provided, notwithstanding the imposition of any other penalty or penalties upon any of the persons named herein, under any of the provisions of this act. The abatement or removal of any such nuisance by the board of commissioners at the expense of said city, as herein provided, shall be *prima facie* proof that the said notice to the owner, occupant, tenant, agent or assignee, was given as herein prescribed.

Sec. 70. The board of commissioners may require all owners, tenants and occupants of improved property which may be located upon or near any street or alley along which may extend any sewer or system of sewerage, which the said city may construct, own or control, to connect with such sewer, or system of sewerage, all privies, water closets, cess-pools, drains, or sinks located upon their



respective properties or premises so that their contents may be made to empty into such sewer or system of sewerage.

#### *Sidewalks.*

Sec. 71. The board of commissioners shall have authority to cause to be put down a suitable curb of brick, stone or other material along and for the foot ways and sidewalks of the streets and alleys of said city, and to order the construction and repair of sidewalks and gutters of such material and width as the board of commissioners may determine, by the owners or occupiers of the lots or parts of lots facing upon said streets and alleys; and in case they, or any part of them, refuse to put down or repair such sidewalks and gutters when required, it shall be lawful for the board of commissioners to have such sidewalks and gutters constructed or repaired, and to collect the expense thereof, with one per centum per month interest added after a demand of thirty days, from the said owner, owners, occupier or occupiers, or any of them, by distress or sale, in the same manner in which taxes levied upon real estate for the benefit of the said city are herein authorized to be collected, and shall remain a lien upon said lot or part of lot, the same as taxes levied upon real estate in said city; which lien may be enforced by a suit in equity before any court having jurisdiction, as other liens against real estate are enforced; *provided, however*, that a reasonable notice shall first be given to said owner or occupier, or their agent, that they are required to construct or repair such sidewalks or gutters. In case of non-residents, who have no known agent in said city, such notice may be given by publication for not less than four consecutive weeks in any newspaper printed in said city, and in all cases where a tenant shall be required to construct or repair sidewalks or gutters in front of the property of his or her occupancy, the expense of such construction or repairing may be deducted out of the accruing rent of said property, and he may recover the amount so paid from the owner, unless otherwise especially agreed upon. The laying or construction of any such sidewalk by said city shall be *prima facie* proof that the said notice, to the owner (resident or non-resident), or occupier, or their agent, was given as herein required.

#### ARTICLE XIV.

##### *Taxes, Levies, Assessments, Etc.*

Sec. 72. The board of commissioners shall annually, before the

levying of taxes provided for and authorized by this act, ascertain the total expense of said city to be provided for by levy for the fiscal year in which said levy is made, and it shall ascertain the sum of money necessary to pay interest accruing on the bonded indebtedness of said city, and what amounts it shall expend for the support of its various departments, and for the improvements of its streets, alleys, avenues and public grounds, or for its contingent expenses; and before making such levy it shall apportion the rate thereof among the several funds so ascertained and provided for, which apportionment shall be spread upon the records of said board and a copy of a statement thereof shall be annually published by direction of said board as soon as the same is recorded, in at least two newspapers of said city of opposite politics. And for the purpose of paying the interest on the present bonded indebtedness, and creating a sinking fund to pay off such indebtedness when due, that is now owed by the city of Huntington and the city of Central City before the enacting of this act, the territory now comprising the city of Huntington and that comprising the city of Central City shall each constitute a separate special levy district in which districts a separate levy shall be annually laid by said board of commissioners to pay the interest and create a sinking fund in said respective districts to pay off and discharge the said bonded indebtedness of each of said cities respectively, and as soon as such indebtedness has been paid by such special levy in either of said districts, then that district shall thereby be abolished, and the remaining levy district retained and such special levy aforesaid annually laid until said indebtedness of that district be fully discharged, in consequence of which that district shall also be abolished, so that the bonded indebtedness of each of the municipal corporations, namely: Huntington and Central City, the territory of each being embraced and included in this act, with the accrued and accruing interest against each, shall be provided for and paid out of levies on property and taxable subjects of each, within the boundaries of said corporations respectively, as they were respectively just prior to the passage of this act; and said boundaries shall be observed and recognized in making levies and assessments for the payment of said bonds and interest as separate taxable districts for said purposes only; and that the territory embraced in this act, not within the boundaries of either of said former municipalities, shall not become liable or taxed to pay any part of the said indebtedness or interest thereon of either of said corporations.

Sec. 73. The board of commissioners shall have authority to levy and collect an annual tax on real estate and personal property in said city, and to impose a license and assess a tax thereon on wheeled vehicles for public hire and upon all dogs kept within said city, and to impose a tax upon all other subjects of taxation under the several laws of the state, which taxes shall be uniform with respect to persons and property within the jurisdiction of said city, and shall only be levied on such property, real, personal and mixed, and on capital, on which the state imposes a tax; *provided*, that no greater levy shall be laid by said board of commissioners on the taxable property of said city than is now permitted to be laid under the state law relating to municipalities, except, however, that the said board of commissioners may, by the unanimous vote of its members, by ordinance, lay an additional levy not to exceed twenty cents on the one hundred dollars of all the taxable property within said city; but said ordinance laying said additional levy shall not become effective or operative if two-fifths of all the members elected to the citizens board shall express a veto to said ordinance in the manner prescribed in article III of this act.

Sec. 74. All taxes assessed upon the real estate within the said city, shall remain a lien thereon from the time the same are so assessed, which shall have priority over all other liens, except for taxes due the state, county or district, and all taxes whether assessed upon realty or personalty or otherwise may be enforced and collected in the same manner and by the same remedies as is now or may hereafter be provided by law for the enforcement of liens and levies for state and county taxes, or in such manner as the board of commissioners may by ordinance prescribe. And in levying of taxes and collection thereof, and the return of property delinquent for non-payment of taxes, the duties of the city clerk shall be similar to the duties of the county clerk of Cabell county in that behalf; the duties of the treasurer in the collection of taxes, licenses and moneys due the city and accounting for the same and the return of property delinquent for the non-payment of taxes, shall be similar to the duties of the sheriff of Cabell county; except the board of commissioners may make such regulations and ordinances prescribing the duties of the city clerk and city treasurer and their manner of performance as the board may deem necessary. And the board shall, through itself and such officers and employees as it may appoint or employ under such regulations and

ordinances as it may enact (not contrary to the laws of this state), having such authority and power as may be necessary for the levying and collecting of taxes, tithables, fines, licenses, sewer and paving assessments owing the city with power and authority to enforce the collection of such fines by imprisonment in the city or county jail.

Sec. 75. No taxes or levies shall be assessed upon or collected from the taxable persons or property within the corporate limits of said city, for the construction, improvement or keeping in repair of roads or the building, leasing, repairing of school houses, or the purchase of lands for the same, or for the support of schools, or for the support of the poor of Cabell county, outside of said corporate limits, for any year in which it shall appear that said city shall at its own expense provide for its own poor and keep its own roads, streets and bridges in good order. And neither the county court of Cabell county, nor the authorities of the district in which said city is situated, shall have or exercise jurisdiction within the corporate limits with relation to the roads, streets, alleys, bridges, wharves, docks, ferries, schools or school houses, but the same shall be and remain under the exclusive jurisdiction and control of the municipal authorities of said city, except that the board of education in the independent school district of the city of Huntington shall have jurisdiction, supervision and control of the schools and school houses in said district; and said city shall be liable only for the construction, improvement, repair and good order of the roads, streets, alleys, wharves and bridges in its corporate limits.

Sec. 76. There shall be a tax of two dollars annually assessed on each and every male inhabitant of said city, over twenty-one and under fifty-one years of age, by the board of commissioners, and the same shall be set out and included in the personal property book against every such inhabitant, and shall be collected by the city treasurer or other officer of the city acting in lieu thereof and under the authority of the board of commissioners, at the time of collecting other levies and taxes. All money collected under this section shall go into the street and wharf fund, or like fund, to be expended upon the roads, streets, alleys, sidewalks, crosswalks, drains, gutters, wharf and bridges of said city.

#### *Depositing City Funds.*

Sec. 77. It shall be the duty of the city treasurer to keep all funds of the city in some bank or banks within said city which

shall pay two per cent or more per annum interest on such deposits, payable quarterly, based on the average daily balance of such funds in all accounts. If no bank within said city is willing at any time to receive deposits of the treasurer and to pay such interest thereon, the treasurer shall report this fact to the board of commissioners who shall thereupon designate a bank or banks in which he shall deposit said funds for the time being and until some bank in said city will receive such deposits on such terms. Before receiving any such deposits said bank or banks shall give bond in the penalty prescribed by the board of commissioners, and with sureties to be approved by said board, conditioned for the prompt payment, whenever lawfully required, of all the city moneys, or parts thereof which may be deposited with them, which bonds shall be renewed at such times as the board of commissioners may require.

*Paving Streets and Constructing Sewers.*

Sec. 78. The board of commissioners of said city of Huntington are hereby authorized to order and cause any avenue, street, road or alley to be graded, or graded and paved, between the curbs with brick, wooden blocks, asphalt or other suitable material, or to be macadamized or to be otherwise permanently improved, under such supervision as they shall be directed by ordinance, upon the lowest and best terms to be obtained by advertising for bids or proposals therefor; and the cost of such grading and paving or macadamizing of any of the avenues, streets, roads or alleys aforesaid, from the curb of either side thereof to the middle thereof, shall be assessed to the owners of the lots or fractional parts of the lots fronting or bounding on such avenues, street, road or alley in proportion to the lineal feet so fronting or bounding owned by each; *provided*, that the cost of paving or otherwise improving the intersections of avenues, streets and alleys shall be paid by the city, and, *provided, further*, that if any such avenue, street, road or alley be occupied by street car tracks or tracks of other railways the cost of said improvements of the space between the rails and two additional feet outside of each rail shall be borne and paid entirely by the persons or company owning or operating such street car or other railway line, unless otherwise provided by the franchise of such street car or other railway company granted previous to the passage of this act.

When the board of commissioners shall deem it expedient to cause any avenue, street, road or alley in said city, or any portion

thereof, to be graded or graded and payed, curbed or macadamized or otherwise permanently improved, they shall, by ordinance, order the work done in the following manner and upon the following terms:

The contract for such improvements, shall, after thirty days' notice published in two daily newspapers of opposite politics, in said city, be let to the lowest responsible bidder; but said city shall reserve the right to reject any and all bids therefor. Before advertising for bids on said work, the board of commissioners shall approve of and adopt plans and specifications therefor, and the advertisement for bids and contracts awarded thereon shall refer to such specifications.

The cost of said paving, macadamizing or other permanent improvement shall be paid in one of two ways (to be specified by ordinance by said board of commissioners), either as set out in section seventy-nine or in section eighty-one herein.

Sec. 79. Said city of Huntington is hereby authorized to issue its bonds for the purpose of providing for the costs of grading, paving, curbing, or macadamizing or otherwise permanently improving the avenues, streets, roads and alleys of said city, or constructing sewers for the proper drainage of said city, in anticipation of special assessments to be made upon the property abutting upon the avenues, streets and alleys so improved, or property so sewered or drained. Said bonds may be in such an amount as shall be sufficient to pay the entire costs and expenses of said improvements for which such special assessments are to be levied; and said city is authorized to sell said bonds, but not below the par value thereof. The amount for which said bonds are issued shall be made up of five bonds payable in two, four, six, eight and ten years, respectively, from the date of their issue, and shall bear interest not to exceed six per centum per annua, payable annually; and in the issuance and sales of said bonds the said city shall be governed by the restrictions and limitations of the constitution of this state, and the restriction and limitations of the state laws of this state relating to the issuances and sales of bonds, so far as such state laws are not in conflict or inconsistent with the provisions of this act; and the assessments as provided for and to be paid in sections seventy-eight and seventy-nine herein shall be applied to the liquidation of said bonds and interest thereon, and if by reason of the penalties collected with the delinquent assessments there be any balance after the payment of said bonds and all accrued interest and costs, it

shall be turned into the city treasury to the credit of the interest and sinking fund of said city .

*Provided*, that such city shall not, by sale or issue of such bonds, cause the aggregate of its debts of every kind whatsoever to exceed five per centum on taxable property; and, *provided, further*, that nothing herein contained shall be considered as authorizing said city on becoming indebted in any other manner, or for any other purpose, to an amount including the existing indebtedness (and in estimating "existing indebtedness," bonds issued for the purposes mentioned in this section are not to be included) in the aggregate exceeding two and one-half per centum on the value of the taxable property herein (as provided in chapter fifty-one of the acts of one thousand nine hundred and five), except for the purpose of grading, paving, sewerage and otherwise permanently improving the streets, highways and alleys of said city as provided for in this act; nor shall said city make such issue and sale of bonds without at the same time providing for the collection of a direct annual tax sufficient to pay annually the interest on such debt and the principal thereof within and not exceeding ten years.

And it shall be the duty of the board of commissioners to immediately certify such assessments to the treasurer for collection as herein provided, and a copy of said order shall be certified by the city clerk to the clerk of the county court of Cabell county who is hereby required to record and index the same in the proper trust deed book in the name of each person against whose property assessments appear therein.

The amounts so assessed against said abutting lots and owners thereof, respectively, shall be paid in ten payments, as follows: that is to say, one-tenth of said amount, together with interest on the whole assessment for one year, shall be paid into the treasury of the city, before the first day of the following May; and a like one-tenth part, together with interest for one year upon the whole amount remaining unpaid on or before the first day of May in each succeeding year thereafter, until all has been paid. Each of said installments of one-tenth shall bear interest at six per centum per annum payable annually from the date of assessment. *Provided, however*, that the owner of any abutting land, so assessed on said avenue, street, road or alley, shall have the right at any time to anticipate and pay any such assessment and interest thereon, and

have the lien against the property so assessed, released as herein-after provided.

If any such assessment shall not be paid when due, the board of commissioners shall cause to be enforced the payment of said assessment and interest in all respects as herein provided for the collection of taxes due the city; and said assessments shall be a lien upon the property liable therefor the same as for taxes, which lien may be enforced in the same manner as provided for the sale of property for the payment of taxes and tax liens; and the liens herein provided for shall have priority over all other liens except those for taxes due the state and the county, and shall be on a parity with taxes and assessments due the city.

When all of said assessments for grading, paving, curbing, macadamizing or other permanent improvements, or for sewerage, shall be paid in full to the treasurer, he shall deliver to the owner of said property a release of the lien therefor, which may be recorded in the office of the clerk of the county court as other releases of liens are recorded.

Under this plan all of said permanent improvements of said avenues, streets and alleys of said city, the contractors shall look only to the city for the payment of the work, and in no sense to the abutting land owners.

Sec. 80. Payment is to be made by all land owners on either side of such portion of any avenue, street, road or alley so paved or improved in such portion of the total cost (less the portion, if any, chargeable to the street or other railway company) as the frontage in feet of his abutting land bears to the total frontage of all the land so abutting on said avenue, street, road or alley or portion thereof paved or improved as aforesaid; but the cost of such paving or improvement on said avenue, street, road or alley shall not include any portion or amount paid for the paving or improvement of intersections of avenues, streets or alleys.

When the paving or improvement of any such avenue, street, road or alley, or portion thereof, shall have been completed, under the contract awarded therefor, the board of commissioners shall cause the several frontages abutting thereon to be measured, and to cause the assessment upon each owner of land abutting thereon to be calculated, showing the proper amount to be determined as provided in the foregoing plan; and the said board of commissioners shall enter the same together with the description of the lots of land as to location, frontage and ownership, upon its records, and



to direct on its records that such owners and lots be assessed and chargeable with the amounts so ascertained to be borne by them, respectively, and when so approved and entered of record the same shall be and constitute an assessment against said owners and lots for such respective amounts.

Sec. 81. The board of commissioners may, if they so elect, cause the costs of any such grading, paving, curbing or macadamizing or other permanent improvements, to be paid in the following manner, to-wit:

Whenever the board of commissioners shall contract for such paving or other permanent improvement to be done, and that it shall be paid in installments by the property owners, fronting on such streets, avenues or alleys as aforesaid, the board may cause the mayor and city clerk to issue to the contractor doing the paving, or other said improvement, a certificate for each installment of the amount of assessment to be paid by the owner of the lot, or fractional part thereof, fronting on such street, avenue, road or alley; and the amount specified in said assessment certificate shall be a lien as aforesaid in the hands of the holder thereof, upon the lot or part of lot fronting on the street, avenue, road or alley so improved, and said amount shall draw interest from the date of said assessment, and the payment may be enforced as set out in this act, in the name of the holder of such certificate; and after a contract has been made by the board to pave or otherwise permanently improve any public highway, street or alley in said city, under this act, and the paving or other permanent improvements, or any stipulated part thereof, has been completed, the said board shall assess the amount each lot shall pay for the improvement so made, and shall make a written report, stating the number of lots and the blocks and the names of the owners of such lots when known and the amount assessed thereon; and when the said board approves said report, or modifies it and then approves it, a copy of said report, so adopted by the board, when certified to by the city clerk of said city, may be recorded in the clerk's office of the county clerk of Cabell county, in the trust deed book, and shall be a continuing tax lien upon the lot against which the assessment is made, until the certificates as aforesaid are paid, and the clerk shall index the same in the name of each lot owner mentioned therein; and the presentation by the lot owner of all the certificates issued as aforesaid against the lot owner, the clerk of said court shall mark upon the margin of the book in which said certified report is re-

corded, that the lien is released to the lot mentioned in the certificate produced.

The board of commissioners may order any such avenue, street, road or alley, between the curbs and between designated points, to be graded or graded and paved or otherwise permanently improved in the manner authorized and provided in section seventy-eight hereof, and may order proper curbs of stone, cement or other suitable material to be set on both sides of the avenue, street or alley so paved or improved, and the entire cost of grading, paving and setting curbs may be assessed to the owners of the lots or fractional parts of the lots, fronting or bounding on such avenue, street or alley between such designated points in proportion to the distance so fronting or bounding owned by each, except the cost of intersections, which shall be borne and paid by the city. The cost of such grading, paving and setting of curbs to be borne by the abutting owners as herein provided, shall be paid in installments as provided in section seventy-nine hereof, and shall become liens and be enforceable as provided by section seventy-nine hereof and the work hereby authorized to be done by the board of commissioners and the assessments therefor, hereby authorized to be made, shall be subject to sections seventy-eight and seventy-nine hereof, and the board shall proceed in relation thereto in accordance with said sections seventy-eight and seventy-nine.

Sec. 82. Upon the petition in writing of the owners of not less than one-half in lineal feet of property abutting upon any avenue, street or alley in said city asking the board of commissioners to grade, curb, pave or macadamize or otherwise permanently improve such avenue, street or alley, and offering in said petition to have their property so abutting as aforesaid assessed not only with their part of the cost of such improvements abutting upon their property, as provided for in section eighty-one of this act, but also offering to have their said property proportionately assessed with the total costs of the paving, grading, curbing or macadamizing or other permanent improvements of the intersection of the avenue, street or alley so paved or otherwise permanently improved as petitioned for, the board of commissioners may order such avenue, street or alley to be paved or otherwise permanently improved as provided in section eighty-one herein and the paving certificates issued to cover such intersections shall be made separate and the last certificate due against

them and their property so agreed to be assessed; and the city may pay such last mentioned certificates, or may re-imburse the property owners paying the same, out of this general levy for streets and wharves, but there shall be no legal obligations on said city to do so.

Sec. 83. When the board of commissioners shall order the construction of any public sewer in said city, the owners of the property abutting upon an avenue, street or alley in which such sewer shall be constructed, shall be charged with and liable for sewer assessments as follows:

When said sewer is completed in any one block, or between two designated points, the board of commissioners shall cause a report to be made in writing setting out the total cost of such sewerage and a description of the lots of land as to the location, frontage and ownership liable for such sewer assessment, together with the amount chargeable against each lot and owner, estimated on the basis of one dollar per foot for corner lots of not more than thirty feet in width, frontage measures on said sewer being considered; and if any lot fronts on two streets, or on a street and alley, in which a sewer is constructed, it shall be assessed on both sides of said streets, or street and alley; *provided*, that when a corner lot has been thus assessed on one end it shall not be assessed on the side; and *provided, further*, that the city shall pay the excess of the costs of any such sewer over and above the amount of such assessments. Said board shall enter an order upon its records setting forth the location and owner of each lot, and the amount of said sewer assessments there against, calculated as aforesaid. The entry of such order shall constitute and be an assessment for such proportion and amount so fixed therein against said respective owners and lots; and said board shall thereupon certify the same to the treasurer for collection, and the city clerk shall file a certified copy of said order with the clerk of the county court of Cabell county, who shall record the same in the proper trust deed book, and index the same in the name of each owner of any lot thus charged with said assessment, and the assessment so made shall constitute and be a lien upon said lots, respectively, which shall have priority over all other liens except those for taxes due the state and county, and shall be on a parity with other taxes and assessments due the city. *Provided, further*, that the sewers mentioned and provided for in this section

shall be only branch or lateral sewers, and this section shall not be construed to embrace trunk sewers, except when such trunk sewers serve the abutting property owners as lateral sewers then and in that case such abutting property shall be assessed at a sum not greater than one dollar per lineal foot for each abutting inside lot, and one dollar and fifty cents for each corner lot of not more than thirty feet in width. The amounts so assessed against said abutting lots shall be a lien against the same and shall be collected in the manner herein provided for the collection of paving liens. Said assessments shall be divided into three installments. Each for one-third of the amount thereof, and the first due and payable in thirty days, the second in one year and the third in two years, from the time of certifying the same to the said treasurer, all bearing interest at six per centum per annum from such date; and the board of commissioners shall issue sewer certificates thereon as further evidence of said indebtedness and lien therefor, and said certificates may be sold or negotiated at not less than par and without any kind of discount, to the contractors doing such work or other person, if the board deem it expedient. *Provided*, any such owner of abutting land on the street or alley in which such sewer is laid, may at any time anticipate and pay any of said installments.

Sec. 84. The liens herein provided for street paving, macadamizing, sewer assessments and assessments for other permanent street improvements shall constitute tax liens upon the real estate against which they are assessed.

And for the purpose of facilitating the collection of such assessments against the property so assessed for improvements, as provided in sections seventy-eight, seventy-nine and eighty of this act, the board of commissioners may issue assessment certificates, with interest coupons attached thereto, to be delivered to and charged against the city treasurer who shall collect the same, and as such certificates and coupons are paid he shall deliver the cancelled certificates to the party paying the same.

All of the assessment certificates, whether paving or sewer, which may be issued under the provisions of this act, shall be made payable at the office of the city treasurer who shall receive payments in full thereon, when due, if tendered to him, and interest thereon from the date of such payment shall cease. The treasurer shall keep a separate and special account of all of said sums of money received by him, and he shall hold said money in trust for the person who thereafter delivers to the treasurer for cancellation any and all

certificates on which said treasurer has received full payment as aforesaid: but the owner of said certificates shall not be entitled to interest on said sum after the date of payment thereof to the treasurer. When the whole amount of any such assessment lien shall have been paid to the treasurer as aforesaid, he shall, when demanded execute a release of said lien in the manner provided elsewhere in this act for releasing paving liens.

Sec. 85. It shall be lawful for said city of Huntington to issue and sell its bonds, as provided in this act for the sale of other paving and sewer bonds, to pay the city's part of the cost of the construction of said sewers and the paving or other permanent improvements of streets and alleys, as required by this act; and said city may levy taxes, in addition to all other taxes, authorized by law, to pay such bonds and interest thereon; *provided*, that the total indebtedness of the city for all purposes shall not exceed five per centum of the total value of all taxable property therein.

It is especially provided that no bonds shall be issued under the provisions of this act, unless and until the question of issuing said bonds shall have first been submitted to a vote of the people of said city, and shall have received three-fifths of all votes cast at said election for and against the same. The board of commissioners of said city may provide by ordinance for submitting to the people at any regular election, or special election called for that purpose, the question whether or not said city shall be authorized to issue bonds for the purpose specified in this act; but the ordinance relating to the issuance of said bonds, and the submission of the same to the vote of the people, need not specify in detail the location of the improvements contemplated to be paid for out of said aggregate issue authorized thereby; and if at such election the people by their vote thereon shall authorize the issuance of said bonds, said board of commissioners may order the sale of same, as needed for said improvements, dealing with all the requirements set forth in this act; and notwithstanding the provisions of sections two, three and six of chapter forty-seven-a, of the code, it shall be sufficient description of the purpose for which said election is held for the ordinance calling the same, or submitting said questions to a vote at any general election, if it shall recite that it authorizes the board of commissioners to issue bonds for the purpose of grading, paving, curbing, sewerage, or otherwise permanently improving the streets, roads and alleys of said city, at

such times as to the board of commissioners shall seem fit or expedient.

The provisions of chapter forty-seven-a of the code, concerning bond elections, shall, so far as they are not in conflict with the provisions of this chapter apply to the bond election and special bond election herein provided for.

Sec. 86. The cost of any improvement contemplated in this act and for which assessments may be made, shall include the cost and expenses of making the assessments, the expense of the preliminary and other surveys, and of printing and publishing all notices required to be published, and serving the notices on property owners, and the cost of construction.

Proceedings with respect to improvements shall be liberally construed by the board of commissioners and the courts to secure a speedy completion of the work at a reasonable cost, and the speedy collection of the assessments after the time has elapsed for their payments, and merely immaterial objections in such cases shall be disregarded.

Sec. 87. In setting forth the lots and lands abutting upon the improvement it shall be sufficient to describe them as the lots and lands abounding and abutting upon said improvement between and including the termini of said improvement, or by the description by which they are described on the land books of the county in which said lots are situate; and this rule of description shall apply in all proceedings in which lots or lands are to be charged with a special assessment.

Sec. 88. When the paving or other permanent improvements of any avenue, street, road or alley, or part thereof, or any sewer therein, shall have been let to contract, and the work shall have been completed, as hereinbefore provided, and the several frontages abutting thereon shall have been measured and said assessments there against calculated, as hereinbefore provided, the board of commissioners shall give notice, by publication for two successive weeks in two newspapers, of opposite politics, published in said city, for an assessment under this act is about to be laid against the abutting property, and owners thereof, for paving and other permanent improvements done on said avenue, street, road or alley, or for sewer constructed therein, describe the location of such paving, or improvements, or sewers, and the owners of said abutting property shall have a right to appear before said board, at any regular or special meeting called for that purpose, within two weeks of the first pub-

lication thereof and move the board to correct any apportionment or assessment excessive or improperly made; and the board shall have the power to make any such corrections before it enters the same as corrected upon the records. The fact that said assessment shall have been entered of record as provided by this act, shall be *prima facie* proof that the notice mentioned herein was given as prescribed in this section.

## ARTICLE XV.

### *Civil Service Board.*

Sec. 89. For the purpose of making examinations of persons for offices or positions in the police and fire department, including the chiefs thereof, and the office of cemetery sexton, and prescribing rules for their conduct, the members of the board of commissioners shall act and be known as a "Civil Service Board," the mayor being the presiding officer, and the city clerk *ex officio* clerk of said board.

The civil service board shall adopt rules for its own government, and cause the minutes of its meetings to be recorded in a book especially for that purpose, which shall be kept by the city clerk at his office, and open to public inspection. The civil service board shall, at least once a year and oftener if it deems it necessary, after ten days notice to the public, published in two daily newspapers of opposite politics, giving the time and place of meeting, hold examinations for the purpose of determining the fitness and qualifications of applicants for offices and positions in the police department and fire department, and position as cemetery sexton, which examinations shall be practical and shall fairly test the fitness of the persons examined to discharge the duties of the position to which they seek appointment; and such examinations, and the declaration of the result thereof, shall be made with the aim to secure and maintain an honest and efficient police force, fire department force, and cemetery sexton, free from partisan distinction or control. Said board shall at once after each of such examinations place to record in the journal of the civil service board, the results of said examination, giving the names of applicants and position sought by them, and their respective percentage based on one hundred. In making such examinations the size, health, physical appearance, habits and moral surroundings shall be taken into consideration.

Sec. 90. In making appointments to the police department and the fire department, and the office of cemetery sexton, whether original, or to fill vacancies therein from time to time, the board of commissioners shall select from the applicants for said respective positions those who, under said civil service examinations, received an average grade of sixty or more, giving preference to the applicant receiving the highest grade and whose said grade certificate is the oldest.

When the list of names of applicants, who are eligible as prescribed in this section, shall have been exhausted, then the board of commissioners may make said appointments from the list of persons who may apply therefor, disregarding, if they choose, those applicants who stood civil service examination and received thereon a grade below sixty.

Sec. 91. All persons appointed to a position in the police department and the fire department, and the office of cemetery sexton, under this act, shall hold their offices or positions during good behavior, and shall not be removed from their said offices or positions except for misconduct or a failure to perform their duties; *provided*, that by the unanimous vote of the board of commissioners any such person may, without cause, be removed from his said office or position.

The board of commissioners shall hear and determine all charges against any officer or person holding a position in the police department and the fire department, and the office of cemetery sexton, after ten days' written notice to the accused of the charges preferred against him, and of the time and place of a hearing on said charges, and an opportunity to the accused to have been heard, at such meeting, in his defense. After thus hearing said charges the board may, by a vote of three of its members, sustain the same, and by like vote may reprimand or suspend or dismiss said accused person from the service of the city. Upon the making of such charges, and pending trial thereon, the board, by a majority vote, or the mayor when the provocation is great, may suspend the accused officer, and if he be thereafter found guilty on the charges preferred, and by reason thereof dismissed, or suspended, he shall draw no salary during the period of either of his suspensions.

*Code of Laws, Etc.*

Sec. 92. The board of commissioners may adopt, by ordinance, a



code of laws and ordinances, which when adopted shall be printed in a book form, or it may be adopted as a whole after it is printed, and said code shall be the law and ordinances of said city, and shall be received as such in all the courts of this state, and the laws, ordinances, franchises and rules when printed therein shall be *prima facie* proof of their correctness.

*Non-Partisan Administration.*

Sec. 93. The object and aim of this act is to procure an honest and efficient administration of the affairs of the city of Huntington, free from partisan distinction or control; and the municipal authorities of the city and courts of the state, shall construe this act with that aim in view.

*Serving Notice.*

Sec. 94. Whenever any notice is required to be given, or any summons, warrant or other process is required to be served or otherwise executed, under the provisions of this act, it shall be sufficient if such notice, summons, warrant or other process be executed by an officer of the police department of said city in the same way or manner in which the laws of the state prescribe for executing summonses and subpoenas by state officers, unless otherwise provided by this act.

*Board of Commissioners Successors to Council.*

Sec. 95. The board of commissioners (together with the citizens board) provided for in this act, and their successors in office, shall be held and deemed, in law and in fact, the successors of the mayor and common council of the city of Huntington and the mayor and common council of the city of Central City.

*Present Officers and Debts.*

Sec. 96. The mayor and the common council, and all appointive officers, of the city of Central City, as heretofore constituted, shall continue in their respective offices until the board of commissioners shall have been elected and qualified as provided by this act, and shall exercise their rights, powers and duties over the territory of

the city of Central City, as heretofore constituted, as prescribed by the acts of the legislature of West Virginia.

The mayor, common council and other officers of said city of Central City, when said board of commissioners shall have been elected and qualified, shall at once turn over to said board of commissioners all records and property of Central City as a part of the records and property of the city of Huntington; and the treasurer and marshal and other officers of Central City shall pay into the treasury of the city of Huntington all corporate funds then in their hands or hereafter to come into their hands by virtue of their respective offices, to be used by said city of Huntington, so far as necessary, to pay any legal outstanding claims against Central City, and the residue, if any, for general purposes. All claims, demands, assessments, and uncollected taxes heretofore levied by or owing to Central City are hereby transferred to the city of Huntington, which is authorized in its own name to collect the same for the purpose aforesaid, in all respects, and in like manner as Central City might have done; and the board of commissioners shall require and make all proper settlements by and with the outgoing officers of Central City; and said city of Huntington shall assume and pay all the indebtedness of said Central City, except it shall not assume or be liable for the bonded indebtedness thereof, but said bonded indebtedness shall be paid in the manner provided by article XIV of this act.

Sec. 97. The mayor and common council, and all appointive officers, of the city of Huntington, as heretofore constituted, shall continue in their respective offices until their successors shall have been elected and qualified as provided by this act, and shall exercise their rights, powers and duties over the territory of the city of Huntington, as heretofore constituted, as prescribed by chapter one hundred and fifty of the acts of one thousand nine hundred and one of the legislature of West Virginia.

Sec. 98. The common council of the city of Huntington, as constituted before this act becomes effective, shall, within ten days after this act takes effect, divide the territory embraced in section two of this act, and each ward thereof, into election precincts, and designate a voting place therein, and shall cause the boundary of said precincts, and the voting places therein, to be published for at least ten days in two daily newspapers of said city, of opposite politics, before the election to be held under this act, all in the manner and according to the provisions of the laws of the state re-

lating to such matters, and not in conflict with the provisions of this act.

And said common council of said city of Huntington shall be and is hereby constituted the canvassing board by and before which the election returns of said first election under this act shall be canvassed, and the result thereof declared, in the manner provided by state laws, for like purpose, relating to municipal elections. And thereafter the board of commissioners shall be *ex officio* a board of canvassers and as such perform said duties.

If at any time a commissioner is a candidate for re-election to said office, the citizens board may, in the manner provided in section fifty-five of this act, appoint some person to act in his stead on the canvassing board, and the person so appointed shall, with the other members of the board who are not candidates for re-election, canvass the returns of said election and make declaration of the result thereof; and in that event the commissioner who is a candidate for re-election shall not, for that election, have anything to do with the canvassing said election returns or the making of the declaration of the result thereof.

The city clerk, acting under state laws in so far as they are not in conflict with this act, shall perform such duties relating to all municipal elections held under the municipal authorities of said city as the clerk of the county court of Cabell county performs, under state laws, in relation to state, county and district elections in said county; and he shall likewise be the custodian of all ballots, tally sheets, etc., pertaining to all municipal elections.

#### *Existing Ordinances and Records.*

Sec. 99. All valid ordinances enacted by and now in force in the said city of Central City, as heretofore constituted, shall remain in full force and effect therein, except where the same are in conflict or inconsistent with this act, until the members of the board of commissioners shall have been elected and qualified under the first election provided by this act, and whenever a majority of said commissioners shall so qualify, all of said ordinances shall *ipso facto* be repealed.

Sec. 100. All the valid ordinances enacted by and now in force in the city of Huntington as heretofore constituted, shall remain in full force and effect within said territory, except when the same are in conflict or inconsistent with this act, until the members of the

board of commissioners, as provided for under this act, shall have been elected at the first election thereunder, and a majority thereof shall have qualified, and upon the election and qualification of a majority of said commissioners said ordinances shall *ipso facto* extend to and over the whole of the city of Huntington as embraced in section two of this act, and shall on and from said time be and remain in full force and effect in the city of Huntington as constituted by this act, or until repealed or amended by said board of commissioners.

Sec. 101. The city clerk, except as may be otherwise prescribed by the board of commissioners, shall be the custodian of all the records and papers pertaining to Central City, as heretofore constituted, and the city of Huntington as heretofore and as now constituted; and said records and papers shall be kept by him at his office and open to public inspection.

Sec. 102. The town of Guyandotte, incorporated under and by chapter one hundred and three of the acts of one thousand eight hundred and ninety-seven, of the legislature of West Virginia, may become and remain a part of the city of Huntington, by and upon the adoption of this act for its government by a majority vote of the qualified voters of said town, at any general election or special election called for that purpose therein. Upon the petition of not fewer than one hundred voters of said town, praying for the submission of said question, the council thereof shall submit to the vote of the people the question whether or not said town shall become a part of the city of Huntington, under the provision of this act, which question shall be submitted at a general election to be held in said town if one is to be held within three months from such time, otherwise said council shall call a special election for such purpose. The calling and holding of any such election, and the canvassing of the returns and the declaration of the result thereof, shall be held in the manner prescribed by the state laws relating to municipal elections, if not in conflict with the charter of said town. The ballot to be voted at such election shall have thereon the words "For becoming a part of Huntington," and "Against becoming a part of Huntington." If a majority of the votes cast at said election shall be "For becoming a part of Huntington," then upon the declaration of said result, said town of Guyandotte shall *ipso facto* be and remain a part of the city of Huntington, and shall thereafter be subject to the provisions of this act, and the ordinances and laws of the city of Huntington shall *ipso facto* extend to and over the

territory now embraced in the corporate limits of said town, and the municipal authorities and other officers of said city of Huntington shall extend to and hold their powers and authority over said territory of Guyandotte; and said city shall assume and pay off the legal debts of said town, except the present bonded indebtedness and a certain interest thereon of said town shall be provided for by a special levy district, embracing only the present corporate limits of Guyandotte in the same manner by which the present bonded indebtedness of Central City, and the city of Huntington, as heretofore constituted, is provided for by section seventy-two of this act. Upon Guyandotte becoming a part of the city of Huntington, as herein provided, the records of said town, the funds and property thereof, shall be turned over to the city of Huntington, in the manner provided for Central City, in section ninety-six herein; and the present territorial limits of said town shall constitute the fifth ward of said city of Huntington until changed as provided by section three of this act; and upon becoming a part of said city of Huntington, said chapter one hundred and three of the acts of one thousand eight hundred and ninety-seven, and all ordinances of said town shall *ipso facto* be repealed.

Sec. 103. All other acts and parts of acts coming within the purview of this act, and inconsistent herewith, are hereby repealed.

(Senate Bill No. 193.)

#### CHAPTER 4.

AN ACT to amend and re-enact section two of chapter one hundred and fifty of the acts of the legislature of West Virginia, of one thousand nine hundred and one, as amended by an act of the legislature of West Virginia, of one thousand nine hundred and nine, fixing the corporation boundary of the city of Huntington.

(Passed February 15, 1909. In effect March 1, 1909. Approved by the Governor February 18, 1909.)

Sec.

2. Fixing the boundaries of the city of Huntington.

*Be it enacted by the Legislature of West Virginia:*

That section two of chapter one hundred and fifty of the acts of the legislature of West Virginia, of one thousand nine hundred and

one, as amended by an act of the legislature of West Virginia of one thousand nine hundred and nine, fixing the corporation boundary of the city of Huntington, be amended and re-enacted so as to read as follows:

• *Corporation Limits.*

Sec. 2.. The corporation territorial limits of the city of Huntington shall be as follows, to-wit:

Beginning at a stake at low water mark on the Ohio river (southerly side thereof), about one-half mile above the mouth of Four Pole creek, and at the intersection of the easterly line of the Williams land with said low water mark; thence easterly and up the Ohio river, with low water mark thereof, to its intersection with low water mark of the easterly side of the Guyandotte river; thence southerly, with the low water mark of Guyandotte river, with the easterly side thereof, to a point directly opposite the mouth of the Crump branch, a tributary of said Guyandotte river on the westerly side thereof; thence westerly in a straight line and crossing Guyandotte river to the mouth of said Crump branch; thence southerly with the westerly line of the Isaac Crump lands to what is known as the Military line; thence westerly with said Military line to its intersection with the south-easterly corporation line of the city of Huntington as heretofore constituted by chapter one hundred and fifty of the acts of the legislature of one thousand nine hundred and one, it also being the easterly line of the lands of the Huntington Land Company (formerly the Central Land Company of West Virginia); thence with said corporation line (and likewise line of said land company) in a south-westerly direction, crossing Four Pole creek, to the south-east corner of the lands of said land company (and likewise the south-east corner at said corporation boundary); thence following the lines of said corporation line (and likewise the lines of said land company), in a westerly and northerly direction, respectively, to and crossing said Four Pole creek to the north bank thereof; thence in a westerly direction, and down Four Pole creek with the north bank thereof, to the intersection of said creek with the southerly line of the right of way of the Chesapeake and Ohio Railway Company; and continuing westerly with said southerly line of said railway right of way to its intersection with the easterly line of the Williams land; thence northerly, with said easterly line of said Williams land, to the beginning.

(Senate Bill No. 107.)

## CHAPTER 5.

## AN ACT to incorporate the city of Keystone, McDowell county, West Virginia.

(Passed February 4, 1909. In effect from passage. Became a law without approval of the Governor.)

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| <p>Sec.</p> <p>1. Body politic and corporate; corporate name and powers.</p> <p>2. Corporate limits and boundaries.</p> <p>3. Municipal authorities.</p> <p>4. By whom corporate powers exercised.</p> <p>5. Council may divide territory into wards.</p> <p>6. Municipal officers to be appointed by council; term of office.</p> <p>7. Elective officers; term of office.</p> <p>8. Who eligible to elective office.</p> <p>9. First election; duty of present council.</p> <p>10. Vacancy in office; how filled.</p> <p>11. General election laws to govern corporate elections.</p> <p>12. Tie vote; council to determine.</p> <p>13. Contested elections.</p> <p>14. Oath of office.</p> <p>15. If officer elected be ineligible; what then.</p> <p>16. Who to preside over council; quorum.</p> <p>17. Council to cause accurate records of proceedings to be kept.</p> <p>18. Proceedings of meetings to be read to council; vote; how taken.</p> <p>19. Powers of council as to improvements and promotion of general welfare of city.</p> <p>20. Shall have power to adopt and enforce needful orders, etc.</p> <p>21. Estimate of expenditures; levy.</p> <p>22. Levy to be upon male persons and real and personal estate.</p> <p>23. Licenses; for what required.</p> | <p>Sec.</p> <p>24. Revocation of license.</p> <p>25. Meetings of council.</p> <p>26. Overseer of the poor; appointment and duties of.</p> <p>27. Powers and duties of mayor; compensation.</p> <p>28. Duties of recorder; compensation.</p> <p>29. Duties of treasurer; compensation.</p> <p>30. Duties of city sergeant; to execute bond; compensation.</p> <p>31. Duties of assessor; compensation.</p> <p>32. Powers and duties of chief of police; to execute bond; police officers.</p> <p>33. Lien upon real estate for city taxes assessed thereon.</p> <p>34. Council may prohibit theatrical performances, etc. deemed injurious to morals or good order of city.</p> <p>35. Taxpayers exempt from certain expenses.</p> <p>36. Condemnation proceedings.</p> <p>37. Issuance of bonds.</p> <p>38. How moneys to be paid out by treasurer.</p> <p>39. Recovery of moneys belonging to city from treasurer and sergeant.</p> <p>40. Council to compel owners of property to build sidewalks, etc.; duty in case of refusal or neglect.</p> <p>41. City of Keystone to succeed to all rights, etc. of town.</p> <p>42. Ordinances now in force.</p> <p>43. Inconsistent acts repealed.</p> |
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*Be it enacted by the Legislature of West Virginia:*

That the charter of the city of Keystone, in the county of McDowell, granted by the circuit court of said county, under chapter forty-seven of the code of West Virginia, be amended and re-enacted, to read as follows:

Sec. 1. That the inhabitants of that portion of McDowell county, in the state of West Virginia, within the limits hereinafter stated, shall be and are hereby created a city corporate and body politic, by the name of "The City of Keystone," by which name they shall have perpetual succession, and a common seal, and by which name they may sue and be sued, plead and be impleaded, contract and be contracted with, may purchase, lease, own, and hold real and personal property necessary to the purposes of said corporation, and

may dispose of such real and personal estate or any part thereof, when it is to the interest of said corporation to do so.

Sec. 2. The corporate limits of the city of Keystone shall be as follows, to-wit:

Beginning at a black gum on the north bank of Elkhorn river, below the Keystone Coal and Coke Company's store, 0 degrees 30 minutes west crossing Norfolk and Western railroad, 422.5 feet to a point, north 17 degrees 0 minutes west 99.5 feet to a point north 87 degrees 0 minutes east 319 feet, crossing Clark's Branch to a point in the Keystone Coal and Coke Company's tram-way, and with same south 29 degrees 15 minutes east 263 feet to a point, south 84 degrees 30 minutes east 82.5 feet to a point, north 46 degrees 30 minutes east 264.5 feet to a point; north 75 degrees 30 minutes east 657 feet to a point on a hillside above said tram-way; south 78 degrees 15 minutes east 722 feet to a point on top of spur; north 31 degrees 10 minutes east 670.5 feet to a point; north 60 degrees 45 minutes east 598.5 feet crossing Elkhorn river to a point; north 33 degrees 45 minutes east 598 feet to a point; south 20 degrees 0 minutes east 461.5 feet crossing Norfolk and Western railroad to a point by a poplar tree; north 78 degrees 30 minutes east 183 feet to a point in an old road; and with same south 30 degrees 0 minutes east 88.5 feet to a point; south 4 degrees 30 minutes east 181.6 feet to a point; south 30 degrees 30 minutes east 545 feet to a point; south 50 degrees 0 minutes east 315.5 feet to a point; south 17 degrees 0 minutes west 161.7 feet leaving said road to a spruce pine; south 76 degrees 0 minutes west 2009 feet to a spruce pine; south 57 degrees 15 minutes west 1213.5 feet south 77 degrees 0 minutes west 258 feet to a sugar tree; north 33 degrees 30 minutes west 1150 feet crossing Elkhorn river to a point; north 38 degrees 15 minutes east 593 feet to a point, north 39 degrees 30 minutes east 330 feet to the beginning.

Sec. 3. The municipal authorities of said city shall be a mayor, recorder and five councilmen.

Sec. 4. All the corporate powers of said corporation shall be exercised by the said council or under their authority, except where otherwise provided.

Sec. 5. If, at any time, the common council of said city, shall deem it necessary, they may divide the territory of said city into wards, having regard to compactness of the territory, including in each ward and equalizing, as far as possible, the population of the



several wards; and may, from time to time, change the boundaries of the several wards so as to equalize the number of inhabitants in each ward as nearly as is practicable to do so; *provided, however*, that no such change shall be made within ninety days next preceding any city election.

Sec. 6. There shall be a town sergeant, a treasurer, assessor, chief of police, superintendent of streets, roads and alleys of said city, appointed by the council thereof and hold their offices during the pleasure of said council, and perform the duties respectively, as hereinafter prescribed, or as may be required by the council. And the said council may appoint one and the same person to fill the various offices prescribed in this section.

Sec. 7. The mayor, recorder and councilmen shall be elected by the citizens of the said town who may be entitled to vote under this act and (except when elected to fill vacancies) for two years, and until their successors shall have been elected and qualified, and shall be residents in said town and entitled to vote for members of the common council.

Sec. 8. No person shall be eligible to any elective office in said city, unless he is a qualified voter thereof, nor unless he has resided therein for at least one year next before his election, and be a freeholder in said city, and if a councilman he shall be a *bona fide* resident of the ward for which he is elected, and the removal from the ward of a councilman from which he is elected shall vacate his office.

Sec. 9. The first election under this act shall be held on the first Tuesday of January, one thousand nine hundred and ten, at the mayor's office in said town, and it shall be the duty of the present common council of the said city of Keystone under its charter granted by the circuit court of McDowell county, under chapter forty-seven of the code of West Virginia, to appoint three inspectors of election to conduct the first election provided for under this act; and every two years thereafter there shall be an election held on the first Thursday of February for the purpose of electing a common council of said town.

The common council of said city now in office shall hold their offices until the officers provided to be elected under this act shall have been duly elected and qualified. As soon as the election for mayor, recorder and councilmen is ascertained, the inspectors of election shall sign a certificate containing a complete return of the

ballots taken at their place of voting, for each of said offices, and shall enclose the said ballots in envelopes, which shall be sealed up and endorsed by each of said inspectors. The inspectors, or one of them, shall, within three days after the day on which the election was held, deliver the said certificate and the ballots sealed up as hereinafter provided, to the recorder of the city of Keystone. At the next meeting of the council thereof, which shall be on the fifth day after the day of election, excluding Sunday, the recorder shall present such certificate and ballots to the council, who shall examine the same and ascertain the true result of such election in said city, and the persons appearing to have received the highest number of votes cast in the said city for the several officers mentioned in this section, shall be declared elected, and certificates thereof, signed by the mayor and recorder, shall be granted to the person so elected.

Sec. 10. When a vacancy shall occur from any cause, in the office of mayor, recorder or in the council, the vacancy shall be filled by appointment by the council.

Sec. 11. At all elections the vote shall be by ballot and the general election laws of the state so far as applicable shall govern all corporation elections.

Sec. 12. Whenever two or more persons for the same office at any election shall receive an equal number of votes, the council shall in an equitable mode determine which of the persons so voted for shall be returned elected.

Sec. 13. Contested elections shall be heard and decided by the council for the time being, but the council may order a new election if they are satisfied the ends of justice will be better attained thereby.

Sec. 14. The mayor, recorder, councilmen and all other officers herein provided for, shall each, before entering upon the duties of his office, and within ten days from the time of his election or appointment, take and subscribe an oath to faithfully and impartially discharge the duties of his office, and the oath to support the constitution of the United States and the constitution of the state of West Virginia.

The mayor having taken such an oath or affirmation, may administer the same to the councilmen and other officers. Certificates of said oath or affirmation shall be recorded in the journal kept by the council.

Sec. 15. If any one, who shall have been duly elected mayor,

recorder or councilman, shall not have been eligible or shall fail or refuse to take the oath or affirmation, required under this act, within the time prescribed, such office shall be declared vacant and the vacancy filled as hereinbefore prescribed.

Sec. 16. The council shall be presided over at its meetings by the mayor, or in his absence, by the recorder, and in the absence of both the mayor and the recorder, by one of the councilmen chosen by a majority of the council present, and a majority of the council shall be necessary to constitute a quorum to do business.

Sec. 17. The council shall cause to be kept in a well bound book, an accurate record of its proceedings, by-laws, acts and orders, which shall be fully indexed and open to the inspection of the citizens and any one who is required to pay taxes to the city.

Sec. 18. The proceedings of the last meeting shall be read to the council, corrected, when necessary, and signed by the person presiding for the time being. Upon the call of any member, the ayes and noes on any question shall be called and recorded in the journal, the mayor, though voting as a member of the council, in case of a tie, shall have the casting vote.

Sec. 19. The council shall have power to open new streets and extend, straighten, widen, and repair old streets and alleys; to curb and pave streets, sidewalks and gutters for public use, and to alter, improve and light the same; and shall assess upon and collect from the property benefitted thereby, such part of the expense thereof as shall be deemed equitable and just by said council; and shall have control of all avenues for public use in said city; to have the same kept in good order and free from obstruction on or over them; to regulate and determine the width of all streets, sidewalks, and public alleys; to order and direct the curbing and paving of all sidewalks and footways for public use in said city, to be done and kept in good order by the owners or occupants of the adjacent property; to control the construction and repair of all houses, bridges, and culverts and sewers, the opening and construction of all ditches, drains, sewers and gutters; to widen, deepen, and clear the same of stagnant water and filth, and to determine at whose expense the same shall be done; to purchase, lay off and appropriate public grounds and control the use of the same: to provide, contract for, and take care of all public buildings proper to the city; to provide for the regular building of houses or other structures, and determine the distance that they shall be built from any street or alley; to cause

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the removal of unsafe walls or buildings; to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome; to abate or cause to be abated anything which, in the opinion of the council shall be a nuisance; to regulate the keeping of gunpowder and other combustibles; to provide in or near the city, a place for the burial of the dead, and to regulate interments in the city, and to provide for shade and ornamental trees; to provide for the making of division fences, and for draining of lots, by proper drains, and ditches; to make regulations for guarding against danger or damage by fire; to provide for the poor of the city; to organize one or more fire companies and to provide the necessary apparatus, tools, implements, engines, or any of them for their use, and in their discretion to organize a paid fire department; and to provide sufficient revenue for the said city, and appropriate the same to its expenses; and to provide for the annual valuation of property and the assessment of taxable persons and property in the city; to adopt rules and regulations for the transaction of business, and for the government and regulation of its own body; to promote the general welfare of the city; to protect the persons and property of the citizens therein; to appoint such officers as they may deem proper; to define their powers, prescribe their duties, fix their term of service and compensation, require and take from them bonds, with such sureties and in such penalties as the council may determine, conditioned for the true and faithful discharge of their duties, and remove them at pleasure. (all bonds taken by the council shall be made payable to the city by its corporate name); to regulate and provide for the measuring or weighing of hay, coal, wood and other articles sold, or for sale in said city, and to regulate the transportation thereof through the streets; to establish and regulate markets, to prescribe the time for holding the same, and what articles shall be sold only in said markets; to protect places of divine worship; to appoint and publish the places of holding city elections; to erect water works, provide a water supply and to collect water rents for said city or to authorize or prohibit the erection of gas works in or near the city, to prevent injury to, and provide for the protection of the same; to provide for the purity of the water and healthfulness of the city: to regulate the speed of moving trains in or through said city; to make regulations with respect to the erection and location of all telephone, telegraph, electric light or other poles within said city, and the extension of wires, lines or

poles by any individual or corporation; to grant and regulate all franchises in, upon, over and under the streets, alleys and public ways in said city, under such restrictions as shall be provided by ordinance, but no exclusive franchise shall be granted nor shall any franchise be granted for a longer period than fifty years; for all of which purposes, except that of taxation, the council shall have jurisdiction for one mile beyond the corporate limits of said city.

Sec. 20. To carry into effect these enumerated powers, and all others conferred upon the said city or council expressly or by implication in this or any other act of the legislature, the council shall have power to adopt and enforce all needful orders, by-laws and ordinances not contrary to the laws and constitution of the United States and of the state of West Virginia, and to prescribe, impose and enforce reasonable fines and penalties including imprisonment under judgment or order of the mayor or recorder of said city, or the person lawfully exercising their functions, and the council, with the consent of the county court of McDowell county, entered of record, may have the right to use the jail of said county for any purpose necessary in the administration of its affairs.

Sec. 21. The council shall cause to be annually made up and entered upon its journal, an account and estimate of all sums which ought to be paid within one year, and it shall order a levy of so much as in its opinion may be necessary to pay the same, not exceeding one dollar (\$1.00) capitation tax and thirty-five cents (.35) on every one hundred dollars (\$100.00) worth of property, real and personal, within said city, in any one year for the current expenses for the said city, unless authorized by two-thirds of the voters of said city, voting at an election to be held for that purpose, and in no case shall said levy exceed fifty cents (.50) on every one hundred dollars (\$100.00) valuation.

Sec. 22. The levy so ordered shall be upon the male persons, residents of said city over the age of twenty-one years, and upon all real and personal estate within said city, subject to state or county taxes.

Sec. 23. Whenever anything for which a state license is required, is to be done within said city, the council may require a city license to be had for doing the same and may impose a tax thereon for the use of the city. And no license to sell strong or spirituous liquors or wine or beer, ale, porter or drinks of like nature within said city, or within one mile of the corporate limits thereof,

shall be granted by the county court of McDowell county, unless the person applying therefor shall produce to said county court the certificate of the council of said city of its consent to the granting of such license. They may impose a license and assess a tax on all carts, drays, and wheeled vehicles used in said city for public hire and may by ordinance prohibit the owners of all animals from allowing them to run at large, and to prevent the same, may impose such fines and penalties as may be deemed reasonable and necessary.

Sec. 24. The council may revoke any license for the breach of any of the conditions of such bond or for other good cause shown, but the person holding the license may first have ten days' notice of the time and place of hearing as well as the cause alleged, and he may be entitled to be heard in person or by counsel in opposition of such revocation.

Sec. 25. The council shall fix the place and times of holding its regular meetings; may provide for special and adjourned meetings; shall have power to compel the attendance of its members; and may prescribe rules and regulations not inconsistent herewith, for the transaction of business and for its own guidance and government; no members of the council shall vote upon or take part in the consideration of any proposition in which he is or may be interested otherwise than as a resident of said city.

Sec. 26. It shall be the duty of the said council to provide for the poor of the city, and to that end may appoint an overseer of the poor, who shall take an oath to faithfully discharge his duties as such; he shall give such bond as the said council may require, and his term of office shall be such as may be prescribed by the said council, who shall also prescribe his duties and the manner of performance thereof, the council shall have power to dismiss said officer at its pleasure.

Sec. 27. The mayor shall be the chief executive officer of said city, and shall take care that the orders, by-laws, ordinances and resolutions of the council thereof, are faithfully executed; he shall be *ex officio* a justice and a conservator of the peace within the city, and shall, within the same, have, possess and may exercise all the powers and perform all the duties, whether in civil or criminal proceedings, vested by law in a justice of the peace; any summons, warrants, or other process issued by him may be executed at any place within the county; he shall have control of the police of the city and may appoint special police officers whenever he deems nee-

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essary; and it shall be his duty, especially, to see that the peace and good order of the city are preserved, and that persons and property therein are protected, and to this end, he may arrest and detain, or cause the arrest and detention of all riotous and disorderly persons before taking other proceedings in the case; he shall, from time to time, recommend to the council such measures as he may deem needful for the welfare of the city; he shall have power to issue execution for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof, and in default of such payment he may commit the party in default to the jail of said city or to the jail of McDowell county until the fine or penalty and costs shall be paid, to be employed during the term of his imprisonment as hereinafter provided; but the term of imprisonment in such cases shall not exceed thirty days. He shall receive a compensation for his services, to be fixed by the council, which shall not exceed seven hundred and fifty dollars (\$750.00) per annum, and in addition thereto such fees as properly accrue to him in proceedings for the enforcements of ordinances, but all such fees shall be collected, when practicable, and accounted for to the city, and warrants drawn covering such costs when collected, payable to the mayor. The mayor shall have no jurisdiction in civil cases or causes of action arising out of the corporate limits of the city. He shall have the same power to issue attachments in civil suit as a justice of his county has, though the cause of action arose out of his city. But in such case he shall have no power to try the same, but said attachment shall be returnable to and be heard before some justice of his county. From all judgments by the mayor, or in criminal cases, for the violation of ordinances, where the prisoner is sentenced to imprisonment or the payment of a fine of ten dollars (\$10.00) or more, appeals shall be allowed as in criminal cases before justices and all laws applying to such appeals from justices, shall apply to appeals from the mayor; and if the appellant on the trial of such appeal be found guilty of the violation of the ordinance in question whether upon the verdict of a jury or otherwise, the court shall ascertain by its judgment the fine or imprisonment to be paid, or suffered by the defendant, having regard to the punishment prescribed by such ordinance, and shall include in any such judgment the costs incurred by the city, as well in the proceedings before the mayor as those in the court.

Sec. 28. The duty of the recorder shall be to keep the journal of the proceedings of the council, and to have charge of the seal, and preserve it and the records of the city; he shall attend the mayor in all examinations, receive and issue his orders, swear witnesses, and perform all the duties of a clerk in the council and mayor's court. In the absence of the mayor, he shall have all the authority of that officer; shall exercise the functions of the office of mayor. He shall charge the treasurer with the whole of the taxes on the assessor's books, in a book provided for that purpose and shall charge the sergeant with all the fines which may come into his hands, and report the same to the treasurer, who shall be charged therewith and he shall give the said treasurer credit for all the money shown to have been paid out and promptly disbursed by him, and such other credits as the council may direct or be allowed by law, and shall also give to said sergeant credit for all moneys shown to have been paid by him to the said treasurer. The said recorder shall receive a compensation for his services to be fixed annually by the council, which shall not be increased nor diminished during his term of office..

Sec. 29. It shall be the duty of the city treasurer to collect all taxes of said city, as well as other income and revenue of said city and to account for and pay over the same as required by law, at such time or times as the council may order, and to enable him to do this properly, he shall have a copy of the assessor's books and all other assessments made, and be charged by the recorder as hereinafter stated therewith, and be charged by the recorder as hereinafter provided with all licenses granted, and fines paid over to him by the sergeant of the city. Every six months, or oftener, if required to do so, by the council, a delinquent list shall be returned by him to the council, to which he shall make oath, of such taxes as he cannot collect, which the council may, if they deem it just, allow and order him credited therewith. It shall be the duty of the treasurer, as soon as the books of the assessor come into his hands, to give notice, by publication in a newspaper, and also to post hand bills throughout the city, that the city taxes are due and collectible, and that all persons who pay their taxes within one month from the date of said notice shall be allowed a deduction of two and one-half per cent (2 1-2 per cent), which sum shall be from the commission allowed to the city treasurer. And all taxes that may remain uncollected by the treasurer, after the exercise



of due dilligence on his part within ——— days of the end of the assessment year, may be, by said treasurer, placed for collection in the hands of one or more of the constables of the said city, who shall collect and account for the same in the same manner that they are required to collect and account for executions, and shall have for his or their services a commission of five per cent (5 per cent), allowed the constable for collecting taxes, shall not be deducted from the commissions of the treasurer, nor shall the treasurer himself, as to such taxes as may remain uncollected at the end of the assessment year, be allowed to collect himself the same and the said five per cent thereto, but nothing herein shall be construed to prohibit the said treasurer from collecting said taxes above referred to. The said treasurer shall have the same power to distrain and sell for taxes that is now possessed by the sheriff of McDowell county, and shall have the same powers to enforce the payment of said taxes. The said treasurer shall at the end of every two montns from the beginning of each assessment year, render an account of his collections and disbursements to the said council of said city. And within thirty days after the close of said assessment year the said treasurer shall make with the said council a full settlement of his accounts for said year, and his failure to do so within the time herein prescribed shall work a complete forfeiture of his commissions and all compensations, and his bond shall be forthwith put in suit by the said council for the purpose of recovering from him and his sureties any sum or sums of money which may be due to the said city.

The said treasurer shall receive as compensation for his services a salary of not less than five hundred dollars (\$500.00) and not to exceed fifteen hundred dollars (\$1,500.00) per annum, to be fixed by the council.

Sec. 30. The city sergeant shall have power to exercise within the corporate limits of said city all the duties that a constable can legally exercise in regard to the collections of claims, executing and levying process and he shall be entitled to the same compensation therefor, except in the case of the arrest of any person for violating any of the ordinances of the city; upon the conviction of such person, he shall be entitled to one dollar, for such arrest to be taxed in the costs against the person convicted; and it shall be his duty to collect all fines assessed by the mayor, recorder or other person exercising the functions of office of mayor in said

city, and pay over and account for the same to the treasurer of said city. The said sergeant shall execute a bond with surety deemed sufficient by said council, in the penalty of not less than five thousand dollars (\$5,000.00) nor more than twenty-five thousand dollars (\$25,000.00), conditioned for the faithful performance and discharge of his duties as such sergeant. The said sergeant shall receive such compensation for his services as the said council may deem proper and right.

Sec. 31. It shall be the duty of the assessor to make an assessment of the property within the said city, subject to taxation, substantially in the manner and form in which assessments are made by the assessor of the county and return the same to the council on or before the first day of July of each year, and for this purpose he shall have access to all public books and records of McDowell county, and to all documents and papers in the hands of the county assessor, relating to assessments for state and county purposes, without expense to the city and shall have all the powers conferred by laws on county assessors. In case the assessor of the city shall discover any property subject to taxation which has not been listed by the county assessor, it shall be his duty to list the same and make report of the fact with a description of the property and its owner to the county assessor, or it shall be the duty of the county assessor to list the same for state and county purposes and to make a proper valuation of the same and report its valuation to the assessor of the city. The assessor of the city shall list the dogs of the city with the names of the owners thereof and return the list to the council; the council shall have power to make and enforce regulations respecting the listing and taxation of dogs within the city, and provide for the impounding and killing, such as appear to have no owner or upon which the tax has not been paid, and have power to make and enforce all needed ordinances respecting the assesment of property; the assessor shall receive such compensation for his services as the said council may deem proper and right.

Sec. 32. The chief of police shall be *ex officio* constable within the corporate limits of the city, and shall give such bond as may be required by the council of said city in the penalty of at least two thousand dollars (\$2,000.00), conditioned as required by law for constables of a county; he may execute any writ or process issued by the mayor or justice of the peace at any place in McDowell

county; he shall have all the powers, rights and privileges within the corporate limits of the city in regard to the arrest of persons, the collection of claims and the execution and return of process that can be legally exercised by a constable of the district in which the said city is situated, and he and his said sureties shall be liable to all fines, penalties, and forfeitures that a constable of a district is liable to, for any failure or dereliction in his office, to be recovered in the same manner and in the same court that fines, penalties and forfeitures may be recovered against such constable. All special police officers shall have and possess all the rights and privileges of a constable of the district within the corporate limits of the city in regard to the arrest of persons and the execution and return of criminal writs issued by the mayor, but the council may exempt them from giving the bond required of constables; the chief of police of said city shall make such settlement with the council at such time and place and in the manner which said council may provide by ordinance, of all his accounts arising by virtue of his office.

Sec. 33. There shall be a lien upon the real estate within said corporation for the city taxes assessed thereon from the commencement of the year for which they are assessed and for all other assessments, fines and penalties assessed or imposed, which liens shall be enforced by the council in the same manner as the lien for county purpose is now enforced, or by appropriate suit in any court of competent jurisdiction in McDowell county. The lien aforesaid shall have priority over all other liens, except that for taxes due the state.

Sec. 34. The council may prohibit any theatrical or other performance, show, or exhibition which it may deem injurious to the morals or good order of the city.

Sec. 35. The said city and the taxable persons and property therein shall be exempt from all expenses or liability for the construction or repair of roads, and shall not be required to pay any poor levies assessed by the county court for the support of the poor outside of the corporate limits of said city for any in which it shall appear that said city shall at its own expense provide for its own poor and keep its streets in order.

Sec. 36. The council shall have the right to institute proceedings in the name of the city for the condemnation of real estate for streets, alleys, drains, market grounds, city prison, or other

work or purpose of public utility. Such proceedings shall conform to the provisions of chapter forty-two of the code of West Virginia, and the expenses thereof shall be borne by the city.

Sec. 37. The council of the said city shall have the right to bond the said city for the purpose of paving the streets and alleys of said city and for constructing water works and a sewerage system for the same, and for the purpose of providing hose and other appliances for extinguishing fire, and for any and all public improvements whenever the council thereof may deem improvements necessary, and to refund outstanding bonds at a lower rate of interest, and to issue new bonds for the purpose of increasing the length of the time on any such indebtedness, but the aggregate indebtedness of said city for all purposes shall not at any time exceed five per centum of the assessed valuation of the taxable property therein based upon the valuation of the last assessment next preceding the date of incurring said indebtedness; and the said council shall by taxation provide a fund for the payment of interest on any and all indebtedness incurred in the manner aforesaid within the period of thirty-four years; *provided*, that no debt shall be incurred hereunder until the question of a bond issue be submitted to a vote of the people and the issuance thereof authorized by a two-thirds vote. Such bonds shall not be sold for less than par, nor exchanged for the evidences of indebtedness of said city, except dollar for dollar.

Sec. 38. No money shall be paid out by the treasurer except upon the order or warrant of the council duly signed by its mayor and recorder, or other officer presiding for the time being. All orders, warrants or drafts drawn by the said council on the treasurer of the city shall be payable on the first day of January of each year, and upon the presentation of any such order, warrant or draft upon said treasurer, he shall fail to pay the same, an action shall be maintained against him and his sureties in any court having jurisdiction for the amount thereof and judgment shall be rendered therefor with interest at the rate of six per centum per annum. Upon such judgment and execution no stay or forthcoming bond shall be allowed.

Sec. 39. If the said treasurer shall fail to account for and pay over all or any moneys that shall come into his hands when thereto required by the said council, it shall be lawful for the council, in the corporate name of the city, by motion before the circuit court

of McDowell county, after twenty days previous notice, to recover from the treasurer and his sureties or their personal representatives, any sum that may be due from the said treasurer to the city. And if the said sergeant shall fail to collect, account for and pay over all fines in his hands for collection, according to the conditions of his bond, it shall be lawful for the council to recover off of him the same by motion in the corporate name of the city, before the said circuit court of McDowell county after twenty days previous notice against the said sergeant and his sureties, or any or either of them; his or their executors or personal representatives.

Upon such judgment and execution thereon no stay or forthcoming bond shall be allowed.

Sec. 40. The said council shall have power to cause the owners of property to build and make sidewalks, footways and gutters in front of their property. If the owner or occupant of any sidewalk, footway or gutter in said city, or of the real property next adjacent thereto, shall fail or refuse to curb, pave or keep the same clean, in the maner and within the time required by the council, it shall be the duty of the council to cause the same to be done at the expense of the said city, and to assess the amount of such expense upon the owner or occupant, and the same may be collected by the city treasurer in the manner herein provided for the collection of city taxes.

Sec. 41. The said city of Keystone shall succeed to all the rights and liabilities of the town of Keystone and it shall be liable for all the debts and obligations of the town of Keystone in the same manner and to the same effect as if such indebtedness had been created by the said city of Keystone.

Sec. 42. All ordinances in force in said town of Keystone at the time this act goes into effect as far as the same or any part thereof are inconsistent with this charter are hereby repealed and all ordinances of said town which are not inconsistent with this charter are hereby retained and shall continue in force with the said city of Keystone until the same shall be repealed or amended by the said council of the said city of Keystone.

Sec. 43. All acts and parts of acts of the legislature of West Virginia, and all existing laws which are in conflict or inconsistent with this charter are hereby repealed and chapter forty-seven of the code of West Virginia, in so far as the same is not incon-

sistent with the provisions of this charter are hereby adopted and made a part hereof.

(Senate Bill No. 18.)

## CHAPTER 6,

AN ACT to amend and re-enact the act of the legislature of West Virginia passed on the twenty-ninth day of February, one thousand eight hundred and sixty-eight, entitled: "An Act to amend and re-enact the charter of the town of Martinsburg," and being chapter eighty of the acts of one thousand eight hundred and sixty-eight; as amended by chapter forty of the acts of the legislature of West Virginia of one thousand eight hundred and seventy-two, passed the fifteenth day of February, one thousand eight hundred and seventy-two; and as further amended by chapter one hundred and fifty of the acts of one thousand eight hundred and seventy-two, passed the twenty-eighth day of February, one thousand eight hundred and seventy-two; as further amended by chapter eighty-one of the acts of one thousand eight hundred and eighty-one, passed on the fourteenth day of March, one thousand eight hundred and eighty-one; as further amended by chapter two hundred and four of the acts of one thousand eight hundred and eighty-two, passed the twenty-seventh day of March, one thousand eight hundred and eighty-two; and as further amended by chapter twenty-nine of the acts of one thousand eight hundred and eighty-three, passed the twenty-first day of February, one thousand eight hundred and eighty-three; and as further amended by chapter one hundred and five of the acts of one thousand eight hundred and ninety-seven, passed the twenty-second day of February, one thousand eight hundred and ninety-seven and to change the corporate limits of said city, so as to include additional territory and consolidate into one act, the whole charter of said city.

(Passed January 22, 1909. In effect ninety days from passage. Approved by the Governor, January 29, 1909.)

- Sec.  
 1. Corporate name.  
 2. Corporate limits and boundaries.  
 3. Boundaries of wards.  
 4. Municipal authorities.  
 5. Officers.

- Sec.  
 6. Corporate powers exercised by council.  
 7. Mayor and councilmen when elected and qualified to exercise corporate powers.

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| <p>Sec.<br/>8. Power of municipal authorities, relating to improvements, etc. and the promotion of the general welfare of the city.<br/>9. To have power to adopt and enforce needful orders, etc.<br/>10. Qualification of voters.<br/>11. Registration of voters.<br/>12. Elections, first election; commissioners and challengers; voting precincts; special elections; board of canvassers.<br/>13. Election of mayor.<br/>14. Who eligible to office of mayor.<br/>15. Election of councilmen; term of office.<br/>16. Eligibility of councilmen; vacancy.<br/>17. No officer to become interested in city contracts; penalty.<br/>18. Oath of mayor.<br/>19. Oath of other officers.<br/>20. Vacancies in office.<br/>21. How vacancies in council and board of affairs filled.<br/>22. Term of office of persons appointed to fill vacancies.<br/>23. Removals from office.<br/>24. Officers of city may perform other duties.<br/>25. Council and board of affairs to keep journal.<br/>26. Regular and special meetings of council.<br/>27. Quorum of board of affairs and council.<br/>28. Salaries of officers.<br/>29. Members of council to receive no salary.<br/>30. Appointive officers; duties and salaries.<br/>31. Duties of mayor.<br/>32. Appointment of board of affairs.<br/>33. Members of board of affairs to give bond; salary; powers and duties.<br/>34. Duties of recorder; compensation.<br/>35. Duties of treasurer.<br/>36. Duties of auditor.<br/>37. Additional duties of auditor.</p> | <p>Sec.<br/>38. Appointment and duties of city attorney.<br/>39. Appointment and duties of police judge.<br/>40. Police judge; if an attorney; where not permitted to practice.<br/>41. Style of ordinances.<br/>42. Provision relating to ordinances.<br/>43. Ordinances passed and vetoes by board of affairs to be spread upon minutes of council.<br/>44. Granting of franchises.<br/>45. Estimate of expenditures and levy.<br/>46. License; tax thereon.<br/>47. Revocation of license.<br/>48. Collection of taxes.<br/>49. Sergeant may distrain and sell for taxes, goods and chattels.<br/>50. Lien of real estate for city taxes assessed thereon.<br/>51. Enforcement of liens for city taxes and assessments.<br/>52. How money appropriated.<br/>53. Paving and curbing.<br/>54. Terms and manner in which council may order paving, etc. done.<br/>55. Sewers; sewer assessment.<br/>56. Liens upon real estate for street paving and sewer assessment.<br/>57. Improvements through or by a market space, etc.<br/>58. City may borrow money and assign liens acquired for paving and sewers.<br/>59. Refunding bonded indebtedness.<br/>60. Buildings for city use.<br/>61. Preservation of health.<br/>62. Regulation of sale of poisonous drugs.<br/>63. Health commissioner; appointment and term of office; board of health.<br/>64. Chief of police; police department.<br/>65. Fire department.<br/>66. No free passes or other gifts.<br/>67. Existing officers and ordinances.<br/>68. Justices and constables of certain districts.<br/>69. Toll roads with gates.<br/>70. Conflicting acts repealed.</p> |
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*Be it enacted by the Legislature of West Virginia:*

## ARTICLE I.

### *The City of Martinsburg.*

Sec. 1. That the inhabitants of so much of the county of Berkeley as are within the boundaries prescribed by article two of this act and their successors, shall constitute, be and remain a municipal corporation by the name of "The City of Martinsburg."

## ARTICLE II.

### *Corporate Limits.*

Sec. 2. The corporate limits of the city of Martinsburg shall be as follows, to-wit:

Beginning at a point on the north side of the Berkeley and Hampshire grade road, 115 feet west of the south-west corner of the Toll Gate House and 1.4 feet south of the C. J. Faulkner fence line (A); thence 52 degrees 15 minutes east 3,515 feet to the south side of the city right of way for main supply pipe to water station; thence along the south side of said right of way, parallel and at a distance of 12 feet from the north side of same, north 67 degrees 50 minutes west 340 feet; north 34 degrees west 900 feet; north 40 degrees 45 minutes west 800 feet; north 66 degrees 30 minutes west 800 feet; north 85 degrees west 260 feet; south 74 degrees 30 minutes west 640 feet; south 86 degrees 15 minutes west 43 feet to the east side of the Dry run pike; thence leaving the pipe line right of way and running along the east side of the Dry run pike, south 1 degree east 61 feet to a point at the north side of the bridge over Tuscarora creek; thence crossing the pike and running the lines of what is now known as "Kilmer's Grove," or which land the corporation of Martinsburg purchased of John D. Kilmer, south 81 degrees west 27x178.2 feet to a stake in Tuscarora creek; north 82 degrees west 343.2 feet to a stake in the mouth of the mill race waste; north 86 degrees 30 minutes west 79.2 feet; north 71 degrees west 99 feet; west 107.2 feet to a large sycamore on the west side of the spring drain from B. S. Kilmer spring; north 71 degrees 30 minutes west passing over a corner stone of C. J. Faulkner and B. S. Kilmer farm at 173.2 feet and containing in all 470.2 feet to a large sycamore tree; north 34 degrees west 21.4 feet to a locust stump, an original beginning corner to lot No. 4, of the Kilmer mill property; north 89 degrees 30 minutes west 105.6 feet to a stone at a white mulberry bush on the south-east side of the old mill race, now the main Tuscarora creek; thence crossing the creek north 22 degrees 15 minutes west 99 feet to a stake, corner of the Harrison Thomas and to John Kilmer lot, and also corner to O. M. Thomas; thence with the O. M. Thomas lines north 74 degrees each 41.2 feet; north 15 degrees east 41.2 feet; north 48 degrees east 153.4 feet to a stake on the north side of a bridge and east side of Bender mill road, corner to the corporation of Martinsburg purchased of O. M. Thomas; thence along the road so as to include the Thomas purchase by corporation, 118 feet; thence east ten feet to a gate post; thence south 20 degrees 45 minutes east 98 feet to a stone in the original Kilmer Grove lot; thence with the same south 62 degrees 15 minutes east 172.8 feet



to a pear tree; thence south 69 degrees 45 minutes east 367.9 feet; south 64 degrees 45 minutes east 132 feet to a stake at a stone; south 78 degrees 45 minutes east 33 feet to a post in the picket fence of John D. Kilmer's garden; thence south 40 degrees west 46.2 feet to a post at the corner of the garden; south 56 degrees 30 minutes east 158.4 feet to a stake (located south 9 degrees 30 minutes east 42.9 feet from the center of a large elm tree in the lawn south of Kilmer's residence); south 82 degrees east 174.9 feet; south 82 degrees 45 minutes east 25 feet; south 88 degrees east 25 feet; north 84 degrees east 25 feet; north 78 degrees east 25 feet; north 75 degrees 30 minutes east 148.5 feet to a fence post on the north side of the entrance to Kilmer's Grove and on the west side of the Dry run pike; thence along the west side of the same north 1 degree west 37 feet to a point at the north side of the right of way for pipe line; thence crossing the road and running the north side of the pipe line right of way, parallel and at a distance of twelve feet from south side of same, north 86 degrees 15 minutes east 27 plus 43 feet; north 74 degrees 30 minutes east 640 feet; south 83 degrees east 260 feet; south 66 degrees 30 minutes east 800 feet; south 40 degrees 45 minutes east 800 feet; south 34 degrees east 900 feet; south 67 degrees 50 minutes east 340 feet to a stake in line No. 1; thence with line No. 1, north 52 degrees 15 minutes east 2,389.7 feet to a 2x2 oak stake at corner (B) located in Wetzel's field 1.8 feet north of right of way "Y" track connecting the Baltimore and Ohio railroad and the Cumberland Valley railroad 42 feet measured along right of way from the center of the Wetzel and Stewart stone fence line. (Line No. 1, if extended north 52 degrees 15 minutes east would pass through the most easterly chimney of the C. O. Lambert house on the M. & W. pike at the mouth of the Warm Spring road); thence north 80 degrees 30 minutes east 1,882 feet to a spike in floor of bridge on the M. & W. pike (C); thence south 56 degrees east 3,668.5 feet to a 2x2 oak stake in the center of the Bradshaw lane; 286 feet north of the north side of the Buxton road (D); thence south 33 degrees 45 minutes west 5,162.5 feet to a 2x2 oak stake 59 feet north-east of a copper bolt in the center of the north coping on Bridge No. 49 Baltimore and Ohio railroad (E); thence south 54 degrees west 5,263.6 feet to a 2x2 oak stake in the Alex. Parks' five acre lot and north 75 degrees east 49.3 feet from a nail driven in a large honey locust tree on the north side of the Charles Town road (F); thence line No. 6 along extension of

southerly line of Shaffer street, crossing Winchester turnpike, Arden road and Cumberland Valley railroad, north 70 degrees 25 minutes west 5,254 feet to a 2x2 oak stake in the G. M. Bowers field, 1.7 feet west of the Cumberland Valley railroad right of way and 28.4 feet from the west rail (G); thence line No. 7 north 30 degrees east 5,005 feet to the beginning.

### ARTICLE III.

#### *Boundaries of Wards.*

Sec. 3. The said city shall consist of five (5) wards, which shall be bounded as follows:

#### *First Ward.*

Beginning at a point in the westerly line, 600 feet southerly from the city corner on the Berkeley and Hampshire grade near Dry run toll gate; thence in a direct line easterly to the middle of First street, at its intersection with Porter avenue; thence southeasterly with the center line of First street to the center line of said avenue to its junction with West Stephen street; thence easterly down the center line of Stephen street to the middle of the bridge east of Water street, which crosses the Spring run, in what was formerly Fair Ground entrance; thence down the middle of the Spring run to the middle of Tuscarora creek; thence down the middle of Tuscarora creek easterly to its intersection with the city limits south-west of Bull Eye bridge; thence south-westerly with the city line to a point on the northerly side of the Charles Town road at the city line corner east of the Standard Lime & Stone Company's quarries; thence westerly following the city line with the extension of the southerly line of Shaffer street, crossing the Winchester turnpike near the one mile post, also crossing the Arden road beyond the toll gates and also crossing the Cumberland Valley railroad to the south-westerly corner of the city limits, and from there, northerly, along the most westerly limits of said city to the beginning; which shall constitute the First ward.

#### *Second Ward.*

Beginning at the point in the westerly line of the city limits 600

feet southerly from the Berkeley and Hampshire grade corner thereof, which was designated as the beginning corner of the First ward: thence with the lines of the First ward easterly to the middle of First street at intersection with Porter avenue, and continuing easterly with the lines of First ward down the center of First street to Winchester avenue, thence to its junction with West Stephen street; thence with the center of Stephen street to the Spring run bridge on East Stephen street; thence continuing with First ward lines, down the middle of Spring run and Tuscarora creek to said city limits; thence leaving the First ward lines and running with the corporation limits, north-easterly to the center of the Baltimore and Ohio railroad on its viaduct bridge over Tuscarora creek; thence westward and northward along the curve of the center line of the Baltimore and Ohio railroad to its intersection with the center line of East Burke street; thence westerly along the center line of Burke street; thence westerly along the center line of Burke street to the west side of Valley street; thence westerly to the point in the north-westerly line of city limits, which is 450 feet northerly from the Berkeley and Hampshire grade city corner; thence with said line, southerly 450 feet to said corner; thence along the westerly line of the city 600 feet to the beginning, corner of the ward and the First ward; shall constitute the Second ward.

#### *Third Ward.*

Beginning at a point in the north-westerly city limits, 450 feet northerly from its Berkeley and Hampshire grade corner, which point is heretofore designated as a corner of the Second ward; thence with lines of Second ward, easterly to the center of Burke street at west side of Valley street; thence with Second ward lines easterly along center line of Burke street to its intersection with the center line of Baltimore and Ohio railroad; thence leaving Second ward lines and extending northward and westward along the center line of Baltimore and Ohio railroad right of way to its intersection with the north-westerly line of city limits at a point in the center of said railroad, 672 feet northerly from intersection with center line of the Cumberland Valley overhead bridge; thence along said north-westerly city line in a south-westerly direction to the point west of water pumping station where pipe line right of way intersects the corporation line; thence northward to include a

strip twelve feet wide along pipe line right of way to Dry run turnpike and continuing across same to include the water works driveway, park and springs and all of the land belonging to the city of Martinsburg for water works purposes; thence returning to the north-westerly city line where it intersects the pipe line, and extending again south-easterly along said city line to the beginning, shall constitute the Third ward.

#### *Fourth Ward.*

Beginning at a point in the center of Burke street and the right of way of the Baltimore and Ohio railroad which is also a corner of the Third ward and a corner of the Second ward; thence easterly along the curve of the center line of the Baltimore and Ohio railroad to the viaduct bridge over Tuscarora creek at the city limits; thence northerly along the eastern line of city limits to a point in said line which would intersect the center line of Pennsylvania avenue extended in its present course and direction from its center as now laid out at Albert street, (which point is 2,955 1-10 feet northerly from city corner at B. & O. and Tuscarora viaduct); thence westerly to the center of Pennsylvania avenue at Albert street; thence westward in the center line of Pennsylvania avenue to a point in the center of and at the junction of Pennsylvania avenue, North Queen street and Williamsport avenue; thence westerly along the middle of Williamsport avenue to the center of the Baltimore and Ohio railroad right of way; thence with the center line of railroad's right of way to the beginning at Burke street, shall constitute the Fourth ward.

#### *Fifth Ward.*

Beginning at the center of Baltimore and Ohio railroad's right of way and the center of Williamsport avenue already designated as a corner of the Fourth ward; thence with lines of Fourth ward eastward along center of Williamsport avenue across North Queen street and along center of Pennsylvania avenue to Albert street, and continuing eastward with Fourth ward line along extended line of center of Pennsylvania avenue to city corporation limits, at a point designated as corner of Fourth ward; thence leaving line of Fourth ward extending north-easterly along the most easterly side of city limits, passing west of Ridenour school house to

the north-westerly city corner in the middle of Bradshay's line north of Schoppert ford road; thence westward with north-east limits of city along city line to stake and spike at the north-westerly corner of bridge across Williamsport turupike between the properties of Lambert and Silver, at bottom of hollow; thence again by another line of the corporate limits westerly to city corner on the northerly side of the "Y" track connecting the Baltimore and Ohio and Cumberland Valley railroads at intersection; thence with north-westerly line of the city limits, in a south-westerly direction to the center of the Baltimore and Ohio right of way at the point 672 feet northerly from center of Cumberland Valley overhead bridge; thence southerly along the center line of right of way of the Baltimore and Ohio to the beginning at center of Williamsport avenue, shall constitute the Fifth ward .

#### ARTICLE IV.

##### *Municipal Authorities.*

Sec. 4. The municipal authorities of the city of Martinsburg shall be the mayor, and one councilman from each of the five wards, who shall constitute the council.

#### ARTICLE V.

##### *Officers.*

Sec. 5. In addition to the municipal authorities mentioned in article IV of this act. said city of Martinsburg shall have a board of affairs, a treasurer, recorder, sergeant, police judge, city attorney, city engineer, commissioner of streets, chief of police, chief of fire department, building inspector, auditor, health commissioners. and such other officers and agents as the council may from time to time create or employ .

#### ARTICLE VI.

##### *Corporate Powers.*

Sec. 6. All of the corporate powers of said city shall be exercised by the said council or under its authority, except as otherwise provided herein.

Sec. 7. The mayor and councilmen, when elected and qualified as hereinafter provided, shall have possession and exercise corporate powers as a body politic by the name of "The City of Martinsburg" and shall have perpetual succession and a common seal, and by that name may sue and be sued, plead and be impleaded, and may purchase and hold or sell real estate and personal property necessary to enable them to discharge its corporate duties, needful or convenient for the good order, government and welfare of said corporation.

Sec. 8. The municipal authorities of said city, acting under the powers and in the manner herein specified, shall have and are hereby granted power to have said city re-surveyed; to open, vacate, broaden, widen and repair streets and alleys; to curb and pave streets, sidewalks and gutters for public use, and to alter, improve, repair and light the same; and to construct and maintain public sewers and laterals, and shall in all cases have power to assess upon and collect from the property benefitted thereby such part of the expense thereof as shall be fixed by ordinance, except as hereinafter provided; to have control of all streets, avenues, roads and alleys for public use in said city, and to have the same kept in good order, free from obstruction on or over them; to have the right to control all bridges within said city and traffic passing thereover; to regulate and determine the width of streets, sidewalks, roads and alleys; to order and direct the curbing and paving of sidewalks and footways for public use in said city, to be done and kept in good order by the owners of adjacent property; to control the construction and repairing of all houses, bridges, culverts, sewers, and to prescribe and enforce all regulations affecting the erecting, repairing or removal of all buildings and structures, and to require permits to be obtained for such buildings, and plans and specifications thereof to be first submitted to the building inspector, and to prescribe and enforce regulations controlling the erection of such buildings, and to secure the safety and health of the public; to control the opening and construction of ditches, drains sewers, cess-pools and gutters; to deepen, widen and clear the same of stagnant water and filth, and to determine at whose expense the same shall be done; to build and maintain station houses, police stations, and police courts, and regulate the management thereof; purchase, lay off, appropriate and control public grounds, squares and parks, either within or without the

city limits as hereinafter defined, and when the council determines that any real estate is necessary to be acquired by said city for any such purpose or for any public purpose, the power of eminent domain is hereby conferred upon said city, and it shall have the right to institute condemnation proceedings against the owners thereof in the same manner and to the same extent and upon the same conditions as such power is conferred upon public corporations by chapter forty-eight of the code of West Virginia of the edition of nineteen hundred and six; to provide, contract for and take care of all public buildings and structures deemed proper for the use of said city; to provide for and regulate the building of all houses or other structures and to determine the distance that they shall be built from the street or alley; to cause the removal of unsafe walls or buildings; to prevent injury or annoyance to the business of individuals from anything dangerous, offensive or unwholesome; to abate or cause to be abated all nuisances; to regulate the keeping of all gunpowder and all other combustibles; to provide and maintain proper places for the burial of the dead; to regulate interments therein upon such terms and conditions as to price and otherwise as may be determined; to provide for shade and ornamental trees and the protection or removal of the same; to provide for draining of lots by proper drains and ditches; to make proper regulations for guarding against danger or damage from fire; to provide for the poor of the city; to organize and maintain fire companies and to provide necessary apparatus, engines and implements for the same; to levy taxes on persons, property and licenses; to provide revenue for the city and appropriate the same to its expenses; to provide for the valuation of property as often as may be deemed proper and for the assessment of taxable persons and property; to adopt rules for the transaction of business and for the government and regulation of its corporate bodies; to promote the general welfare of the city and to protect the person and property of citizens therein; to appoint such officers as they may deem proper and require and take from them bonds with such security and in such penalty as may be determined, conditioned for the faithful discharge of their duties; to regulate and provide for the weighing of produce and other articles sold in said city; to regulate the transportation thereof through the streets; to establish and regulate markets, to prescribe the time for holding the same and what shall be sold only

in such markets, and to acquire and hold property for market purposes if deemed proper; to regulate the placing of signs, bill boards, posters and advertisements, and other obstructions in, on or over the streets, alleys and sidewalks of said city; to preserve and protect the peace, order and health of the city and its inhabitants; to appoint and fix places for holding city elections; to erect, own, lease, regulate, authorize or prohibit the erection of gas works, electric light works in or near the city, and to operate the same and to sell the products thereof, and to do all things necessary and incidental to the conduct of such business; to provide for and preserve the purity of the water and the health of the city; to prescribe and enforce ordinances for the purpose of protecting the health, decency, morality and order of the city and its inhabitants, and to punish violations of such ordinances, even if the offenses under and against such ordinances shall also constitute offenses under the laws of the state of West Virginia or the common law; to have and exercise all the rights, privileges and powers provided by chapter forty-seven of the code of West Virginia of the edition of nineteen hundred and six, and amendment thereof not inconsistent with this act, and shall retain, keep and succeed to all rights, privileges, property, interest, claims and demands, heretofore acquired by, vested in or transferred to the said city of Martinsburg, or heretofore to the corporation of Martinsburg.

Sec. 9. To carry into effect these enumerated powers and all other powers conferred upon said city, expressly or by implication in this and other acts of the legislature, the municipal authorities of said city shall have power in the manner heretofore prescribed to adopt and enforce all needful orders, by-laws and ordinances not contrary to the laws and constitution of this state, and to prescribe, impose and enforce reasonable fines and penalties, including imprisonment, and with the consent of the county court of Berkeley county, entered of record, shall have the right to use the jail of said county for any purpose necessary to the administration of its affairs.

## ARTICLE VII.

### *Qualification of Voters.*

Sec. 10. Every person qualified by law to be a member of the



legislature of this state, and who shall have been a resident of the territory within said city, as bounded by this act, at least one year preceding the date of election and in the territory in the ward, in which he offers to vote, at least ten days, and a *bona fide* resident of the election precinct in which he offers to vote, shall be entitled to vote at all elections held by the voters of such city or the corporate authorities thereof.

Sec. 11. The council shall by ordinance provide such regulations for the registration of voters as may be rendered necessary by state laws.

## ARTICLE VIII.

### *Elections.*

Sec. 12. The first election under this act shall be held on the second Monday in May in the year one thousand nine hundred and nine; and the second election on the second Monday in May, in the year one thousand nine hundred and ten, and on the same day every two years thereafter. Such first election, and all subsequent elections, shall be held in such manner as is, or shall be, prescribed by law; except, however, that for the first election held under this act, the council shall pass a resolution at the first regular meeting thereof held after the passage of this act, or at least ten days prior to the first election providing for the division of the several wards of said city, as constituted by this act, into election precincts, numbering the same, establishing the boundaries thereof, designate the voting places in each precinct, the name of the commissioners, clerks and challengers to hold the said first election.

No more than two commissioners, appointed as above provided, shall be of the same political party, and the clerks and challengers shall be one each of two political parties, and said officers for holding all subsequent elections shall be selected in the same manner and of different political parties as hereinbefore set forth; *provided*, that the council may at any time after the first election change the names and boundaries of precincts, may create more precincts in each ward and may arrange all or any of the precincts in any of the wards, but the new arrangement shall be so made as to have as nearly as practicable not more than two hundred voters residing in any one precinct: *provided, further*, that such re-arrangement shall be made by ordinance passed in the manner pre-

scribed for passing an ordinance herein, and it shall be the duty of the council to arrange said precincts, if after any election more than two hundred votes be cast at the precinct, so that the new precinct will, as far as practicable, contain not more than two hundred voters each.

In all county and state elections, the election precincts for the territory in Berkeley county embraced in the city of Martinsburg, shall be as herein designated, and the county court of said county shall, from time to time, so arrange the election precincts in said county to make the above named precincts, or any change or rearrangements thereof, election precincts respectively of said county.

Special elections for any purpose must be authorized by the council, concurred in by the board of affairs as herein provided and called by the mayor. Notices of all special elections must be given by publication in two newspapers of general circulation, published in the city of Martinsburg, at least thirty days before the date fixed for such special election, and by posting such notices in such manner as the council may prescribe.

The council shall sit on the sixth day, Sunday excepted, after every election as a board of canvassers, each member of the council having one vote; and as such board of canvassers, they shall canvass, ascertain, publish and declare the result of any election held; and the circuit court of Berkeley county shall have power to control proceedings of said board of canvassers by *mandamus* and prohibition. The said board shall keep in a separate book a record of its proceedings, and shall take down and record any evidence, motion, or paper filed, or offered by any candidate, which book and record shall be open to the public and shall be kept in the custody of the recorder.

## ARTICLE IX.

### *Election of Officers.*

Sec. 13. On the second Monday in May, one thousand nine hundred and ten, and on the same day every two years thereafter, there shall be elected by the qualified voters of the city, a mayor, who shall hold his office from the first day of June succeeding in the year in which he is elected for a term of two years, and until his successor is elected and qualified.

Sec. 14. No person shall be eligible to the office of mayor except a freeholder and a citizen entitled to vote at the election at which he is elected, and no person shall be elected to such office, or retain and hold the same, who shall be or become an officer or employee of any person, firm or corporation holding any franchise or contract under or with said city.

Sec. 15. On the second Monday in May, one thousand nine hundred and nine, there shall be elected one councilman from each ward of said city as constituted under this act. Said councilmen so elected in each of said five wards shall hold their office for the term of one year from the first day of June, one thousand nine hundred and nine, until the first day of June, one thousand nine hundred and ten, at which time said councilmen so elected and the five councilmen holding over, under the old charter, shall be succeeded in office by the five councilmen, one from each of said wards to be elected on the second Monday in May, one thousand nine hundred and ten. At each election thereafter five councilmen, that is to say, one from each ward, shall be elected by the qualified voters thereof for the term of two years from the first day of June, following their election.

Sec. 16. Councilmen must be residents at the time of their election, and voters, in the ward from which they are elected, and freeholders in the city, and upon ceasing to be freeholders in the city or residents of the ward, during the term for which they were elected shall *ipso facto* vacate their office and the vacancy created shall be filled by the council until the next election for councilmen; and the circuit court of Berkeley county is hereby given jurisdiction by *mandamus* or *quo warranto* at the suit of any taxpayer of the city to declare and enforce such vacancy.

#### ARTICLE X.

##### *No Officer to be Interested in City Contract.*

Sec. 17. If any officer, member of the board of affairs or councilman, shall in any way become personally interested in any contract for labor, work, material or articles of any kind, done, performed or purchased for said city in any contract awarded after competitive bids, to which said city shall be a party, he shall be deemed guilty of a misdemeanor and shall be fined not to exceed five hundred dollars or imprisoned not to exceed three months, or

both fined and imprisoned at the discretion of the court, and the judgment of conviction shall operate to vacate his office, and the judgment shall so state, and it shall also operate to render such contract void and no money shall be paid thereon. Jurisdiction to try, determine and sentence for a violation of this section is hereby conferred upon the circuit court of Berkeley county.

#### ARTICLE XI.

##### *Oath of Mayor.*

Sec. 18. The mayor before taking his seat or performing any of the duties of such office shall take and subscribe an oath or affirmation that he possesses the qualifications prescribed by this act to hold such office, and if not subject to any of the disqualifications prescribed therein, and that he will support the constitution of the United States, and the constitution of this state, and honestly discharge the duties of his office to the best of his skill and judgment, which oath shall be filed and preserved with the other papers and books of the city .

#### ARTICLE XII.

##### *Oath of Other Officers.*

Sec. 19. The members of the board of affairs, treasurer, recorder and members of the council, and all other officers elected or appointed under this act, shall take and subscribe an oath or affirmation in the time, manner, form and effect prescribed for the mayor.

#### ARTICLE XIII.

##### *Vacancies.*

Sec. 20. If a vacancy should occur in the office of mayor, the council shall, as soon as practicable, fill the vacancy by the appointment of some qualified person. If any vacancy occurs in a city office appointed by the mayor, then such vacancy shall be filled by appointment by the mayor, of some qualified person with the con-

currence of the council, subject to the regulations for the original appointment.

Sec. 21. All vacancies occurring in the council shall be filled by the council; all vacancies in the board of affairs shall be filled by the mayor.

Sec. 22. All persons appointed to fill vacancies in elective offices shall hold office until the next city election. Vacancies occurring in appointive offices shall be filled for the unexpired term.

Sec. 23. The council shall have and is hereby granted power and authority to remove from office the mayor, recorder, treasurer or member of the board of affairs for any of the causes mentioned in section six of article IV of the constitution of West Virginia, or for any violation of section sixteen of article IX, or section seventeen of article X of this act, upon written charges preferred by a member of the council, or by any responsible citizen to the council, and to remove from office, under this provision, four-fifths of the members of which the council consist, concurring in such removal, and the officer against whom the charges are preferred, shall be served with reasonable notice of the time of the hearing to be held upon such charges, together with a copy of such charges, and shall have the right to be represented before the council in person and by attorney, and the right to require all witnesses to be sworn and testify under oath before the council.

#### ARTICLE XIV.

##### *Officers May Perform Other Duties.*

Sec. 24. Any member of the council, the mayor, recorder, treasurer, or member of the board of affairs or any other elective or appointive officer shall, during the time for which he is elected, be eligible or appointive to any other office under the city; *provided*, such employment is authorized by the council by a specific resolution for such appointment, and which shall in no event be for a longer period than said council is selected to serve under this act.

#### ARTICLE XV.

##### *To Keep Journal.*

Sec. 25. The council and the board of affairs shall each keep

a journal of all its proceedings, which shall at all times be open to the inspection of the taxpayers of the city; and be a public record, and the ayes and noes of the members on any question shall, at the request of any member, be taken down and entered thereon.

#### ARTICLE XVI.

##### *Meetings of Council.*

Sec. 26. The council shall hold regular meetings on the first Thursday of each month of the year and such special meetings as the business to be transacted may require, at such time, place or places in the city as the council shall, from time to time, ordain or appoint; and the council shall have power by proper ordinance or resolution, entered of record, to vest in any officer of the city, or any member or number of members of their body, authority to call special meetings and in like manner prescribe the mode in and by which such special meetings shall be called.

All questions put, except as to such matters as are herein otherwise provided, shall be decided by a majority of all members elected. No business shall be transacted at any special meetings of the council unless specifically mentioned in the call for such meeting.

##### *Quorum.*

Sec. 27. A majority of the whole number of members appointed and confirmed by the board of affairs shall constitute a quorum, and a majority of the whole number of members elected to the council shall constitute a quorum to do business, but a smaller number may adjourn from time to time, and may compel the attendance of absent members in such manner and under such penalties as either body may by rules provide.

#### ARTICLE XVII.

##### *Salaries.*

Sec. 28. The mayor, recorder, members of the board of affairs, treasurer and other officers, employees and appointees, shall receive for their official services such salaries as the council shall, from time to time, by ordinance fix and establish; but the salaries

of any such officers shall not be increased or diminished during the term for which he was elected or appointed; *provided*, that the salaries of all officers appointed on or before the first day of June, one thousand nine hundred and nine, shall be fixed by the municipal authorities in office on or before the first day of June, one thousand nine hundred and nine. All fees and charges allowed heretofore, by any law or ordinance, shall be paid into the city treasury, and no officer, elective or appointive, shall receive any compensation whatever, except his salary. *Provided*, that nothing in this act shall operate to abrogate any existing contracts heretofore made by the corporation of Martinsburg. The council shall pass suitable ordinances securing to the city all such fees and charges.

Sec. 29. The members of the council shall receive no salaries for their official services.

#### ARTICLE XVIII.

##### *Appointive Officers.*

Sec. 30. The mayor shall appoint a recorder, sergeant, treasurer, city engineer and building inspector, to be confirmed by the council, and the council shall prescribe the duties and fix the salaries of such officers and also fix the salaries of all other officers, not otherwise provided for in this act.

#### ARTICLE XIX.

##### *Duties of Mayor.*

Sec. 31. The mayor shall be chief executive officer of the city and shall preside at all meetings of the council and shall have a vote in case of a tie; he shall have charge and control of the police, except as herein otherwise provided; he shall see, except as herein otherwise provided, that the laws and ordinances of the city are enforced; that the peace and good order of the city are preserved and that the persons and property therein are protected, and to this end he may cause the arrest and detention of riotous and disorderly persons, and shall perform such other duties and services as the council may ordain in addition to the duties prescribed by this act and not inconsistent herewith; he shall from

time to time at his discretion or when called for by the council, submit to the council information relative to the state of the city and its several departments; and he shall submit to the council an annual message and from time to time recommend such measures for its consideration as he may deem expedient in the interest of the city; he shall have power to appoint competent persons to examine the affairs of any department or departments when he shall deem it necessary, the cost of which shall be provided for and paid by order of the council; he shall appoint, subject to the provisions of this act, a police judge, city attorney, chief of police, policemen and commissioner of streets.

Whenever it shall be the duty of the mayor to make an appointment under this act, he shall at the first regular meeting of the council make a nomination therefor to the council and the latter shall at the meeting consider the same, and confirm or refuse to confirm, or reject the same. If the nomination be not confirmed, then the mayor shall at the same meeting make another nomination and the council shall then and there consider the same, and confirm, refuse to confirm, or reject the same. If the second nomination be not confirmed, then the mayor shall make another nomination and the power of the council in relation thereto shall be the same as with the other two nominations. If all the nominations be rejected, the mayor shall not make any other nominations at that meeting without the request of the council, but at the next regular or special meeting of council the mayor's duties and powers, and the council's duties and powers shall be the same in relation to such appointment as at the former meeting. If after the second regular meeting held as aforesaid, no such appointment be confirmed, then the mayor shall at once send the entire list of appointments made by him to the council, to the board of affairs and the latter shall at its first meeting confirm or reject one of said appointments. If it rejects all of them, then the mayor can make one more appointment to the board of affairs, and if the latter be not confirmed then the board of affairs shall appoint some one to fill such office. The recorder, except as herein provided, shall perform the duties of mayor whenever, and so long as the mayor is from any cause not able to perform his official duties, except he shall not preside over the council.

In the absence of the mayor, at a meeting of the council, the



council shall select one of its members to preside over its meeting, who shall have a vote as a councilman. If the mayor and recorder are both absent from the city or otherwise disabled from performing the duties of the mayor, the council may elect a mayor *pro tempore*. The mayor shall have power to appoint at any time special policemen, who shall be sworn in without confirmation by the council.

## ARTICLE XX.

### *Appointment and Duties of the Board of Affairs.*

Sec. 32. The mayor shall, on or before the first day of June, one thousand nine hundred and nine, appoint three qualified voters and freeholders of the city of Martinsburg, who shall be known as the board of affairs, not more than two of whom shall be from one political party, the object and purposes being to make this a non-partisan board. One of such members shall be appointed for two years, one for four years and one for six years. At the expiration of the term of such members of the board of affairs, as above set forth, each successor shall be appointed for six years, thus causing the new member of such board of affairs to be appointed after each election by the mayor, said appointment so made by the mayor to be confirmed by the council. And said board shall at no time be composed of more than two members of any one political party. The mayor may attend at any time a meeting of the board of affairs and make such recommendations as he may desire.

Sec. 33. The three members of the board of affairs, appointed as provided in the preceding section of this act, shall each be required to give an official bond in the penalty of five thousand dollars, and each member shall receive from the city a salary to be fixed by the council. The said board of affairs shall have the management and control of any parks and any public utilities which the city may now or hereafter own. They shall also have charge of the maintenance, improvement and repairs of all streets, alleys, public grounds, sewers and other improvements owned by the city in, under or along such streets or alleys; they shall also have the management and control of the fire department, water and health department, commissioner of streets, city prison, or any crematory, cemetery, hospitals and other departments and institutions of like nature, owned or controlled by the said city; they shall appoint

the auditor and chief of the fire department, to be confirmed by the council, whose terms of office shall be respectively two years from the time of their appointment; they shall also appoint a health commissioner, who, together with the members of the board of affairs and the mayor, shall constitute the board of health of the city, who shall manage and have control of the sanitation of the city. The board of affairs shall have power to suspend without pay, or dismiss permanently, the chief of the fire department, or any member of the fire department, for incompetency, misconduct in office or gross immorality; but all such suspensions or dismissals shall be reported to the first meeting thereafter of the council, with the reasons therefor. And the council shall confirm such suspensions or dismissals as the facts of the case may determine. The board of affairs shall require the office of the city engineer to be so conducted and managed that all plats, notes or surveys and other documents and records of like nature, prepared by the city engineer for the city, shall be the property of the city; and also may cause to be prepared for the permanent use of the city, a map of the city, with necessary profiles, showing the location, alignments and grade of the streets and alleys, boundaries and location of sewers, water pipes, fire plugs, gas pipes and electric and other subways along or under any such streets, alleys or public places, and provide for additions to and upon said map showing the location of all such pipes and subways as may be hereafter added, so as to make the same at all times conform to any alterations made in any such streets, or any improvements of a public nature made therein. The said board shall not be authorized to inaugurate any new work without first reporting the plan of same to, and obtaining the concurrence of the council. Any disregard of this provision shall be ground for impeachment and removal of any member or members of such board guilty of such conduct, and also to have action or actions on his or their bonds for any damage occasioned to the city by reason of his or their corrupt discrimination; or, at the election of the city, for a joint action against two or all of the members of such board for such damages. The management or control over the various works intrusted to and the duties imposed upon them, shall be in accordance with such lawful rules and regulations as shall be adopted by the council. Such rules and regulations shall be enacted as ordinances of the city, and whenever the council shall pass any ordinance, resolu-

tion or by-law, providing for the comfort, health, convenience, safety, peace and good order of said city, or of the inhabitants thereof, or providing for any work to be done by virtue of any of the powers vested in the municipal authorities of such city, the said council shall provide that the board of affairs shall see that the provisions of such ordinance are enforced or carried out; but nothing herein shall be so construed as to divest the mayor of any of his powers.

The board of affairs shall be the purchasing committee of the city, under such regulations as the council by ordinance may prescribe and shall audit and pay all accounts against the city and report the same to the council. Any contract made or ordinance passed by the council, shall be certified by the recorder to the board of affairs, and it shall become effective within ten days after its passage, unless within ten days the board of affairs shall veto the same; in which event they shall notify the mayor of their disapproval, and their reason for such disapproval shall be endorsed thereon or attached thereto. The mayor shall lay the same, with the reasons, before the council at its next meeting, and thereupon the mayor shall put to the council the question: "Shall the ordinance or contract become effective notwithstanding the objections of the board of affairs?" If four-fifths of all the votes of the members elected to the council are cast in the affirmative the same shall become effective; if less than four-fifths be cast in the affirmative the measure shall be lost.

If any appointments made by the board of affairs, which are required to be confirmed by the council, are not so confirmed, the board of affairs shall have the same power and duty as to such appointments as to those made by the mayor.

## ARTICLE XXI.

### *Duties of Recorder.*

Sec. 34. It shall be the duty of the recorder to keep a properly indexed journal of the proceedings of the council, board of affairs and board of health, and have charge of and preserve the records of the city; he shall attend the police judge in all the examinations, receive and issue his orders, swear witnesses and perform all the duties of a clerk in the council and in the police judge's court. In the absence of the police judge, he shall exercise the

functions of police judge; he shall perform all other duties required of him by order, or by ordinance, of the council; and the said council may recommend said recorder as a police judge, who if appointed by the mayor, shall perform the duties thereof, together with the other duties hereinbefore set forth. As recorder he shall receive compensation for his services to be fixed by the council, which shall not be increased or diminished during his term of office.

## ARTICLE XXII.

### *Duties of Treasurer.*

Sec. 35. It shall be the duty of the city treasurer to keep all funds of the city in some bank or banks within said city, which shall pay interest on such deposits and on the average daily balances of such funds of the per cent equal, at least, to that paid by state depositories on all funds of the state of West Virginia, and in the same manner and at the same time. If no bank within said city is willing at any time to receive deposits of the treasurer and pay such interest thereon, the treasurer shall report this to the council, whereupon the council shall designate the bank or banks in which he shall deposit said funds for the time being, and until some bank in said city will receive such deposits on such terms. Before receiving any such deposits, such bank or banks shall give bond in such penalty as the council shall prescribe and with sureties to be approved by said council, conditioned for the prompt payment, whenever lawfully required, of all city moneys, or parts thereof, which may be deposited with them, which bond shall be renewed at such times as the council may require.

## ARTICLE XXIII.

### *Duties of Auditor.*

Sec. 36. The auditor shall be the city accountant and auditing officer of the city and it shall be his duty to keep the accounts of said city in a detailed and systematic manner under proper classification so as to show the bonded and other indebtedness of said city, and the amounts and claims due the same as well from taxes, levies and assessments as from other sources.

Sec. 37. In addition to the other duties of the auditor, it shall be his duty on or before the first day of August in each year to make a copy from the real and personal property books of the assessor of Berkeley county of all property shown to be liable to taxation within the limits of the city of Martinsburg, and to certify such copy under his hand as a true and correct copy thereof, and to deliver the same to the council to assist said council and board of affairs, in preparing the annual estimate of expenses to be certified to the council as a basis for the annual levy. After such annual levy is made in each year, it shall be the duty of the auditor to extend said levy upon said real estate and personal property books for said city, and to prepare proper tax tickets therefrom against all owners of real estate and personal property subject to taxation in said city. He shall turn said tax bills over to the sergeant, who shall collect said taxes when due and payable, turning the same over to the treasurer, taking his receipt therefor. In addition to the above duties of the auditor, he shall perform such other duties as the council and board of affairs shall prescribe.

#### ARTICLE XXIV.

##### *Duties of the City Attorney.*

Sec. 38. The mayor shall appoint, subject to confirmation by the council, a city attorney who shall be the legal adviser of the city and all its officers in all matters arising and in which legal proceedings may be taken; he shall prosecute all suits, actions and proceedings instituted on behalf of said city and defend all suits and actions against said city, and, when requested in writing, shall give his written opinion to the mayor, council and board of affairs, or any standing committee thereof, upon such legal questions as may be referred to him affecting the city's interests; he shall perform such other duties as may be required. It shall be his duty to attend sessions of the police court, when requested by the mayor or police judge, and prosecute all trials therein and all appeals that are taken from such court; and for his services he shall receive such compensation as the council shall provide.

#### ARTICLE XXV.

##### *Duties of Police Judge.*

Sec. 39. The mayor shall appoint, subject to confirmation by

the council, a police judge for the city of Martinsburg, who shall hold his office for a term of two years from and after his confirmation by the council and until his successor is appointed and qualified, and the said mayor shall appoint as such police judge the recorder if directed by the council. Before the police judge shall enter upon any of the duties of his office he shall take and subscribe an oath to be filed with the records of the city, that he will support the constitution of the United States and the state of West Virginia, and that he will faithfully and impartially discharge the duties of his office to the best of his skill and judgment; and he shall give bond in the penalty of a sum not to exceed five thousand dollars as fixed by the council, conditioned for the faithful performance of his duties as such police judge and the accounting for and paying over of all property and moneys that may come into his possession, or under his control by virtue of such office, which bond and the sureties thereon, shall be approved by the council and filed with the records of the city; he shall receive a compensation to be fixed by the council, which salary shall be payable in monthly installments and which shall not be increased or diminished during his term of office. The police judge shall be *ex officio* a justice and conservator of the peace, with authority to issue process for all offenses committed within the police jurisdiction of the city of Martinsburg, of which a justice of the peace has jurisdiction under the state statute, and for all violations of any city ordinance, and shall have charge of and preside over the police court of such city, and may commit persons charged with felony or misdemeanor to jail or take bond for their appearance before the grand jury of the circuit court of Berkeley county; he shall keep an accurate account of all his judicial proceedings in such court, showing the style of case, which record shall be indexed and numbered. It shall be his duty to hold daily sessions of his said court, Sunday excepted. Before trying any person charged with any violation of an ordinance, he shall issue his warrant specifying the offense or violation charged; he shall render judgment in any case as the law of the state or the ordinance of the city applying thereto may require; he shall also have the power to issue execution for all fines, penalties and costs imposed by him, and he may require the immediate payment thereof, and in default of such payment may commit the party so in default to the jail of the county of Berkeley or other place of imprisonment in said city,

if there be one, until the fine and penalty and costs shall be paid or satisfied, to be employed during the term of imprisonment as hereafter provided by ordinance, but the term of imprisonment in any such case shall not exceed thirty days. In all cases where a person is sentenced to imprisonment or to the payment of a fine of ten dollars or more, such person shall be allowed to appeal from such decision to the circuit court of Berkeley county, upon the execution of an appeal bond with security deemed sufficient by the said police judge in the penalty of double the amount of fine and costs imposed by him, conditioned that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him by the circuit court on such appeal, and in no case shall judgment for a fine of less than ten dollars be given by the police judge if the defendant, his agent or attorney, object thereto. If such appeal be taken, the warrant of arrest, the transcript of the judgment, the appeal bond and other papers of the case shall be forthwith delivered by the said police judge to the clerk of the circuit court, and the court shall proceed to try the case as upon indictment or presentment and render such judgment, including that of costs, as the law and the evidence may require.

The expense of maintaining such persons committed to jail shall be paid by the city.

The police judge shall account for and pay over the amount of all fines, as well as the fees of himself and other officers, under salary, collected by him weekly, to the treasurer of the city, and shall make monthly reports thereof, and of all other matters pertaining to his office to the council of the city. In the absence of the police judge the recorder of the city, if he be not appointed police judge, shall sit as such police judge with the same power and authority, and if the said recorder is the said police judge, as hereinbefore authorized, then the mayor, or some other officer of the city designated by the council, shall act as police judge with the same power and authority.

Sec. 40. The police judge, if an attorney, shall not practice in said police court as an attorney or counselor in any case appealed or removed therefrom, but shall have the right to practice law as an attorney in other courts and cases.

#### ARTICLE XXVI.

##### *Ordinance; General Provisions.*

Sec. 41. The style of the ordinance of the city shall be "Be it

ordained by the Council of the City of Martinsburg;" but the ordinances now in force shall remain in effect until amended or repealed, except where the same are in conflict or inconsistent with this act.

Sec. 42. All ordinances shall be presented in writing and no ordinance shall be so amended in its passage as to change its general purpose. No ordinance shall be considered for final passage at the meeting at which it is introduced, nor unless the same shall have been reported upon by a committee, but a reference committee may be dispensed with by the affirmative vote of three-fifths of the members elected to the council. No ordinance shall contain more than one subject, which shall be clearly expressed in its title; nor shall any ordinance be passed by the council unless a majority of all the members elected to the council shall concur therein by yeas and nays when the question is put upon its passage.

Sec. 43. All ordinances passed by the council, and vetoes of the board of affairs, shall be spread at large upon the minutes, and at the next regular meeting such ordinances and vetoes shall be read in open council, and the mayor shall sign said minutes, when found correct or corrected, in the presence of the council. The council shall provide a well bound book in which shall be copied all ordinances in the order in which they are passed, which ordinances so copied shall be compared with the originals by the mayor and shall be signed by him when found correct. Such book shall be indexed so as to show in brief form the substance of the ordinance. All copies thereof certified as hereinafter provided, shall be received by all courts and justices in this state as evidence. But the council may adopt, by ordinance, properly designating and describing it, a code of laws and ordinances, which when adopted shall be printed in book form, or it may be adopted as a whole after it is printed, and the said code shall be and become the laws and ordinances of said city, and shall be received as such in all courts of this state, and the printed volumes published under the order of the council shall be so received as evidence of what is printed therein till errors or omissions be affirmatively shown therein.

## ARTICLE XXVII.

### *Franchises.*

Sec. 44. All franchises granting the right of occupancy of any



portion of the streets of the city for work of public utility and service, shall be granted by the council, but no such franchise shall hereafter be granted except under the following restrictions and conditions:

No franchise shall be granted, except at the time of granting it, bond be made to the city, providing that the grantee shall indemnify the city against all damages caused by construction, maintenance or operation of such works; all reasonable additional provisions and conditions may be made for the protection of the public, necessary damage or inconvenience by reason of the construction, maintenance or operation thereof.

No grant of a franchise for the extension of, or an addition to, any line or work on public service through, over or under any additional street or territory of the city, shall be made for a period extending beyond the time limit for the expiration of the franchise, if the principal work is one granted before this act goes into effect and not limited as to time; any franchise granted for an extension or addition thereto shall nevertheless be made subject to the conditions hereof, including a time limit of not exceeding fifty years.

The council shall in all franchises hereafter granted, embody therein a plainly expressed condition, where the franchise is for work to be useful chiefly to the citizens of the city, that at the expiration of such franchise the grantee shall, if required by the council, sell to the city the plant at what it is then worth.

If the city and the owner of the plant cannot agree upon its worth, then the value shall be ascertained by an impartial arbitration, one arbitrator to be selected by the city, one by such owner of the plant, these two to select a third, and the decision of any two to be binding upon both parties.

#### ARTICLE XXVIII.

##### *Estimate of Expenses and Levy.*

Sec. 45. The board of affairs shall, on or before the first day of August in each year, prepare and submit to the council an estimate of the amount of money necessary and advisable to be expended for the purpose of the city for the current year next ensuing and to be provided for by the levy of taxes as herein provided for such current year; in which estimate the board of affairs

shall ascertain and present a detailed itemized estimate of the money necessary to pay interest on the bonded indebtedness of said city, the amount required for the several sinking funds for the reduction of the principal thereof, the amount to be expended severally for streets, alleys, curbing, water works, police department, fire department, street paving, sewers, salaries, parks, real and personal property, contingent expenses and other expenses, together with an itemized statement of the estimated receipts, other than that to be derived by the annual levy, and after receiving such estimates and before making the levy, the council shall apportion the rate thereof, (including the estimated receipts for licenses, and all other sources) among the several funds so ascertained and provided for, which said apportionment, when adopted, shall be spread upon the records of the council.

Upon such estimate of expenses, the council shall thereupon, by an ordinance, lay a levy for the ensuing tax year of a sum not to exceed thirty-five cents on each one hundred dollars assessed valuation of all taxable property, real and personal, subject to taxation in said city, as well as the capitation tax of not to exceed two dollars upon every male inhabitant of said city over the age of twenty-one years, who is subject to a capitation tax under the laws of the state of West Virginia, and said council is authorized to levy to such maximum of thirty-five cents on each one hundred dollars of valuation, notwithstanding any general laws now in force, or which may be enacted, restricting the powers of municipal corporations to levy taxes.

Sec. 46. Whenever any thing for which a state license is required, is to be done within said city, or within two miles of the corporate limits thereof, the municipal authorities, as herein provided, may require a city license to be had for doing the same, and may, in any case require from any person licensed, a bond with sureties and in such penalty and with such conditions as it may deem proper, and the council, on notice, may revoke such license at any time if the condition of the said bond be broken; and no license to sell strong or spirituous liquors or wine or beer, ale, porter, or drinks of a like nature, within said city, or within two miles of the corporate limits thereof shall be granted by the county court of Berkeley county, unless the person applying therefor shall produce to said county court the certificate of the council of the city, that said council has granted a city license author-

izing said person to sell as aforesaid; and upon the production of said certificate before said county court, said court shall grant a state license to sell as aforesaid to the said person, upon his compliance with all the requirements of law in relation thereto.

A person assessed with a city license for the sale of strong or spirituous liquors, or wine or beer, ale, porter or drinks of a like nature, within said city limits or within two miles of the corporate limits thereof, shall pay said tax to the treasurer of the city before any such license be granted to him by said council.

The municipal authorities may impose a license and assess a tax thereon on all wheeled vehicles for public hire, all dogs kept within said corporate limits, all insurance, bonding, casualty and guaranty companies, auctioneers, book agents, bowling alleys, billiard saloons, bagatelle saloons, bond, notes and loan associations, building and loan associations, capitation taxes, commission merchants, common criers, circuses and menageries, theaters, drays, cabs, hacks, etc., eating houses, express companies, hitting and striking machines, hobby horses, junk dealers, real estate agents, insurance agents, livery and feed stables, liquor dealers, omnibuses, peddlers, pawn brokers, stock brokers, slot machines, social clubs, street vendors, tobacco, snuff and cigars, etc., theatrical shows, transient merchants, telegraph and telephone companies, electric light companies, gas companies and other business, property, profession or occupation. The municipal authorities may prescribe, impose and enforce reasonable fines and penalties, including imprisonment under the order of the police judge of said city, or the person lawfully exercising his functions, upon any person carrying or attempting to carry on any business for which the said license is required, without first obtaining a city license therefor, and paying the city license tax assessed thereon. All licenses provided for in this chapter shall be paid to the sergeant. For the purpose of enforcing the provisions of this section, the city shall have police jurisdiction for two miles beyond the corporation limits thereof.

Sec. 47. The license of any person issued by said city, who shall be convicted in any court of competent jurisdiction of the illegal selling of spirituous liquors, or drinks of like nature, may be revoked at the pleasure of the council. And in the event of a second conviction of the same person for any illegal selling of such liquors or drinks of like nature, such license shall be re-

voked by the council; *provided*, for one such conviction of any person holding such a license of the violation of any law or ordinance forbidding the sale of such articles on Sunday, the council shall revoke such license and no license shall thereafter be granted him.

The council shall have power to make all regulations and pass all ordinances necessary and proper concerning the granting and revoking of all licenses.

## ARTICLE XXIX.

### *Taxes; How Collected.*

Sec. 48. The city taxes annually levied by said council shall be collected as follows:

Immediately after the annual levy for city taxes is laid, the auditor shall extend the same on the property books made out by him, including thereon the proper capitation taxes; he shall make out proper tax tickets in the following manner, that is to say: instead of a single ticket for the whole amount charged to any person, firm or corporation, there shall be two tickets, each for one-half of said amount; these one-half tickets shall be severally numbered or designated "First" and "Second," and the same after being examined, compared and found to be correct by the council shall be turned over to the sergeant by the first day of October following the levy. The sergeant's receipt for the gross amount thereof shall be returned and entered upon record and the sergeant charged therewith. The sergeant shall give notice by publication for twenty days in two newspapers of general circulation published in said city, stating that said tax tickets are in his hands for collection, the penalty for non-payment thereof, and the time and place when the same may be paid; *provided, however*, that the taxpayer shall have the right to anticipate the payment of the whole or any part of the taxes assessed. Immediately upon the receipt by the sergeant of any taxes, the same shall be paid to the treasurer and his receipt taken therefor.

The one-half ticket designated "First" may be paid to the sergeant any time before the first day of December next succeeding said levy; the one-half ticket designated "Second" may be paid to the sergeant at any time before the first day of June next succeeding said levy. On all the one-half tickets designated "First" and re-

maining unpaid in the sergeant's hands on the first day of December, succeeding said levy, a penalty of five per cent shall be added and collectable, together with six per cent interest per annum until paid. On all one-half tickets designated "Second" and remaining unpaid in the sergeant's hands on the first day of June, succeeding said levy, a penalty of five per cent shall be added and collectable, together with six per cent interest per annum until paid; *provided, however*, that the council shall have the power any year by resolution, to extend the time that such tax tickets may remain in the sergeant's hands and be paid to him before adding the penalty, for a period not to exceed thirty days.

The council may by ordinance allow a discount for prompt payments.

The sergeant shall have power to collect said taxes so placed in his hands, together with the penalty and interest thereon, heretofore provided, to be added thereto.

The sergeant shall be charged with the gross amount of said tax tickets so delivered to him for collection and no deduction therefrom shall be allowed, unless on or before the first day of September of each year, he makes out and returns to the council a delinquent list of the taxes uncollected for the year previous, with his oath attached thereto, stating that such delinquent list is correct and just; that he has received no part of the taxes mentioned thereon; that he has used due diligence to find property to distress for said taxes, and has found none, and that the same is uncollectable.

Penalties and interest provided for in this section to be added to such taxes, shall not be deemed or considered as any part of the limitation in this act hereinbefore prescribed, restricting the annual city levy to fifty cents on each one hundred dollars valuation.

The sergeant shall not take or collect anything but money for the payment of taxes.

The sergeant shall perform such other duties as the council may require, and receive such compensation as shall be fixed by the council.

Sec. 49. All goods or chattels belonging to a person, firm or corporation or estate, assessed with any city taxes, whether the same be a capitation tax or a tax upon real or personal property, or an assessment for paving or other improvements, shall be liable for

said taxes and may be distrained therefor in whosoever possession they may be found, and the sergeant shall have the same power to collect said taxes or assessments from any person owing debts to or having in his possession any estate belonging to a person assessed with any tax or assessment of any kind, that the sheriff has to collect state taxes in such cases. The sergeant may distrain and sell for all such taxes and assessments and in all respects have the power to enforce the collection thereof as the sheriff has to enforce the collection of state taxes.

Sec. 50. There shall be a lien upon all real estate within said city for the city taxes assessed thereon, including such penalties and interest added thereto for non-payment thereof, as are prescribed by this act, from the first day of January of the year in which said taxes are assessed. Said liens may be enforced by appropriate suit in any court of record in Berkeley county; *provided*, such suit be instituted within five years from the time the said liens attached as herein provided, and such suit may either be, by and in the name of the city of Martinsburg as plaintiff, or said city may intervene by petition in any suit pending to sell or enforce liens against any real estate, which is subject to such liens for said taxes. The liens herein created shall have priority over all other liens, except those for taxes due the state and county.

Sec. 51. Said liens for city taxes and attendant penalties, as well as for improvement assessments, may also be enforced by certifying the same to the clerk of the county court of Berkeley county for certification to the state auditor and the same may be certified down by said auditor and sold for the taxes, interest, penalties and commissions thereon, in the same manner, at the same time, and by the same officer as real estate is sold for the taxes, interest, damages, costs and commissions due the state thereon, which officer shall account therefor on settlement with the council and pay the same over to the treasurer.

### ARTICLE XXX.

#### *Money; How Appropriated.*

Sec. 52. No money shall be appropriated and no debts shall be contracted, and no contracts authorized by the city, except by an ordinance passed by the council as specified in article XXVI, and no such ordinance shall be passed except where the funds to

meet the same, shall have been first provided by levy duly made in accordance with the provisions of this act. No contract shall be entered into involving or anticipating further levies, unless all questions connected with the same, shall have been first submitted to the vote of the people and have received three-fifths of all the votes cast at such election.

#### ARTICLE XXXI.

##### *Sewers, Paving and Curbs.*

Sec. 53. The council shall have the right to establish the width of any sidewalk along any street, alley or public square, or portion thereof, and any owner of ground fronting on such street, alley or public square shall in such manner as the council shall reasonably prescribe, pave and curb the sidewalk adjacent to such property. In case of a failure or refusal of such owner to pave or curb the same, the council may cause the same to be properly curbed and paved by the city, and levy and collect from such owner, the whole costs of such curbing and paving adjacent to such property, with a penalty of five per centum added thereto, together with six per centum interest until paid; and in like manner to require the owner of any property adjacent to any paved sidewalk heretofore or hereafter constructed, to keep the same in repair and in default of doing so, to cause the same to be repaired and to levy and collect from said owners the whole cost thereof with a penalty of five per centum added thereto together with six per centum interest per annum until paid. In all cases of such assessment, whether for the original or for the repairing of sidewalks, payment thereof, including penalties and interest, shall be made to the sergeant within thirty days after the completion of the work, who shall have power to collect the same from the owner or owners of any such property, by distress and sale in the same manner in which taxes levied for the benefit of the city are authorized to be collected; and in addition, there shall be a lien upon such real estate, which lien may be enforced by appropriate suit in any court of record of Berkeley county.

Sec. 54. Whenever the council may deem it expedient to cause any street or alley in said city, or portion thereof, to be paved in a permanent manner, it shall order the work done in the following

manner and upon the following terms: The contract for such paving shall, after due advertisement, in which the council shall reserve the right to reject any and all bids, be let, if let, to the lowest and best bidder. The contractor shall look only to the city for payment for the work and in no sense to the abutting land owners. The total cost of grading and paving any such street or alley, (except when streets are occupied by street car tracks, for the distance between the rails and two additional feet outside of each rail, which portion shall be borne and paid entirely by the street car company owning or operating such railway and tracks) shall be borne by the owners of the land abutting upon said street, alley or portion thereof, subject to the following plan, that is to say: Payment is to be made by all land owners on either side of such portion of a street or block so paved, in such portion of the total cost, less the portion, if any, chargeable to such street railway company, as the frontage in feet of his land bears to the total frontage of all land so abutting on such street, alley or portion thereof, so paved as aforesaid. The cost of such paving chargeable to the abutting property is not to include any portion or amount paid for paving of squares at intersections of streets, which shall in all cases be borne and paid by the city.

When the paving of any street or alley or portion thereof shall have been let to contract and the work done as hereinbefore provided, it shall be the duty of the city engineer to cause the several frontages abutting thereon to be measured, to calculate the assessment upon each and every land owner so abutting, and to certify the same to the council, showing the proper amount to be determined as provided in the foregoing plan. It shall be the duty of the council to examine and compare such assessments, amounts and names so certified to it. Thereupon the council shall give notice by publication for two successive weeks in some newspaper published in said city that an assessment, under this act, is about to be laid against abutting property for paving done on said streets or alleys, describing the location of such paving. Any owner or owners of abutting property shall have the right to appear before said council, within three weeks from the first publication thereof, and move such council to correct any apportionment or assessment improperly made; which corrections said council shall have the power to make. If found to be correct, or when rectified, the council shall cause the same to be entered, together with the de-



scription as to the location, frontage, depth and ownership of the lands, so far as the same may be ascertained, upon its records, and to enter in its records, that such owners and lots be assessed and chargeable with the amounts so ascertained to be borne by them, respectively. When so approved, certified and entered of record, the same shall be and constitute an assessment against said owners and lots for such respective amounts. It shall be the duty of the council to immediately certify such assessment to the sergeant for collection as hereinbefore provided. A copy of such order shall be certified by the recorder to the clerk of the county court of Berkeley county, who shall be required to record and index the same in the proper deed book in the name of each person against whose property assessments appear therein. The amount so assessed against any land owners, as aforesaid, shall be paid in four payments as follows; that is to say: One-fourth of said amount shall be paid to the sergeant before the first day of June or the first day of December, whichever shall come first after said work is completed, certified and entered of record, as aforesaid, and one-fourth of said amount before the first of the one of said months next following, and one-fourth each on the first day of June and the first day of December, or as they shall come after the work is completed and entered of record; the purpose being to require payment every six months until the entire amount is paid, and on the date when the city taxes are due. *Provided, however,* that any abutting owner so liable for any portion of the costs of such paving shall have the right at any time, after the same is certified as aforesaid to the sergeant for collection, to anticipate and discount the payment of any or all of such installments, allowing six per cent per annum discount for any such anticipated payments, computed at the day of payment to the date fixed for the maturity thereof. To each of such installments of assessments remaining unpaid in the sergeant's hands at the time specified for such payment, a penalty of five per cent, together with six per cent per annum interest until paid, shall be added; and payment thereof enforced in all respects as hereinbefore provided for the collection of any other taxes due the city and such shall be a lien upon the property liable therefor, the same as for other taxes, and the lien may be enforced in the same manner as provided for other taxes.

The liens hereinbefore provided for shall have priority over all

other liens, except those for taxes due the state and county, and shall be on a parity with other taxes and assessments due the city. Upon the payment of any assessment to the sergeant, he shall deliver to the party paying the same a release of the lien therefor, which may be recorded in the county clerk's office as other releases of liens. Should such assessment not be in his hands, or have not by him been turned over to the treasurer, if the same shall be shown to the satisfaction of the council to have been paid in full to any officer entitled to receive the same as designated by it, the council may direct the auditor to execute a release of such lien, which release may in like manner be recorded.

## ARTICLE XXXII.

### *Sewers.*

Sec. 55. Whenever the council shall order the construction of any public sewer in said city the owners of the property abutting upon any street, in which such sewer shall be constructed, shall be charged with and liable for sewerage assessments as follows: When said sewer is completed the city engineer shall report to the council in writing the total costs of such sewerage, with a description of the lots and land as to the location, frontage, depth and ownership liable for such sewer assessment, so far as the same may be ascertained, together with the amount chargeable against each lot and owner, estimated on the basis of one dollar per foot for inside lots, and one dollar and twenty-five cents per foot for corner lots, frontage measures on said sewer being considered, except that such estimate as to corner lots fronting thereon and having a greater depth than one hundred and fifty feet, shall be estimated at one dollar and fifty cents per foot frontage; and thereupon said council shall give notice by publication as is required in the case of street paving assessments, and the same right shall exist as to the persons and property affected and the same duty as to corrections by said council, as are prescribed with reference to paving, which report shall, in like manner be examined by the council and if found to be correct, or corrected as aforesaid, and such estimated assessments to be a fair and equitable apportionment of the costs of such sewer, it shall enter an order upon its records setting forth such location, depth, ownership and said amount of said

sewer assessment against each property respectively, calculated as aforesaid, and the entry of such order shall constitute and be an assessment for such proportion and amount so fixed therein, against such respective owners and lots. If after such advertisement, notice and hearing, said council shall find that such apportionment at such rate is unjust or inequitable, it shall ascertain, fix and assess the cost thereof, among and upon the abutting owners respectively, fairly and equitably and in like manner assess and enter the amounts so fixed, respectively, upon its records, and the council shall in either event thereupon, certify the same to the sergeant for collection, and certify a copy of such order to the clerk of the county court of Berkeley county, who shall record the same in the proper deed book and index the same in the name of each owner of any such lot, so charged with such assessment. Such assessment so made shall constitute and be a lien upon said lots respectively, which shall have priority over all other liens except those for taxes due the state and county, and shall be on a parity with other taxes and assessments due the city. Said amounts so assessed against said several land owners, shall be paid by the parties liable therefor, to the said sergeant at the time, in the manner, and with the attendant penalties and interest, for failure to pay promptly at the time prescribed, in all respects as hereinbefore provided, in the case of assessment for paving streets and alleys in a permanent manner; and the parties liable therefor in the same manner and to the same extent, shall have the right and be entitled to anticipate any or all of such installments, and to receive the same discount thereon as in such case provided. The owner or owners of any lot abutting upon any street or alley in said city, on which a public sewer is or may hereafter be laid and constructed, upon which lot any business or residence building is or may hereafter be erected, not otherwise connected with a public sewer, may be required and compelled by the board of health to connect any such property with such sewer. Notice to so connect may be given by the board of health, to the owner, lessee or occupant of such property. Each day's failure to comply with such notice and to connect with such sewer by such owner or owners, after ten days have elapsed after such notice is given, shall be a misdemeanor and a separate and new offense under this section, and each such offense shall be punishable by a fine of not less than five nor more than twenty-five dollars. Jurisdiction

to hear, try, determine and sentence for violation of this section is vested in the police court of said city.

If said owner or owners fail to comply with the notice to make such sewer connection, then the council may by ordinance, order the work to be done at the expense of the city and the cost thereof be certified to the clerk of the county court and the same constitute a lien upon said property, with the same force and effect as taxes.

Sec. 56. The liens herein and hereinbefore provided, for street paving and sewerage assessments, shall constitute liens upon the real estate upon which they are assessed, as against creditors of the owners thereof or purchasers for value from, and without actual notice of such liens, only from and after the time that the statement thereof, certified as aforesaid, shall be filed for record in the office of the clerk of the county court of Berkeley county.

Sec. 57. When the whole or any portion of the improvements authorized by this act, passes through or by a market space, park, cemetery, structure for the fire department, water works, school building, infirmary, market house, work house, hospital, house of refuge, bridge, gas works, public prison, court house, church or any other public structure, or public ground within said city and belonging to said city, or to the county, state, or any church, association or eleemosynary institution, the council may authorize the assessment to be certified to the clerk of the county court of Berkeley county and the same shall thereupon be recorded by said clerk in proper deed book and shall thereupon become a lien against said property, and collectable as other assessments are collected against individuals under this act. It shall be the duty of those persons having charge of the fiscal affairs of any such property or institution, to make proper arrangements for meeting such assessments, when due and payable.

Sec. 58. The city of Martinsburg, by ordinance of the council, may borrow money in an amount equal to the amount of said liens herein acquired, for the purpose of paying any contract for paving or sewerage under this act, and may assign said liens as security for such loan or loans; but in no event shall the money so borrowed be expended for any other purpose, than in the payment of the indebtedness owing by the city for such work; that is: liens for street paving can only be used by the city in borrowing money

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to pay for street paving, and liens for sewerage can only be used by the city in borrowing money to pay for sewerage.

### ARTICLE XXXIII.

#### *Refunding Bonded Indebtedness.*

Sec. 59. The council may refund the bonded indebtedness of said city, by issuing bonds of the city payable within twenty years, bearing no greater rate of interest than five per cent, but the indebtedness of the city shall not thereby be increased, without the consent of the voters of said city being first had, and obtained as provided by law.

Such bonds shall not be sold for less than par nor exchanged for the evidence of said indebtedness of said city, except dollar for dollar, and there shall be provided a sinking fund that will discharge said bonds as they shall become due. Said bonds shall express on their face, that they may be paid at any time after five years, at the pleasure of the city. A record shall be kept of all proceedings hereunder; *provided*, that nothing herein contained, shall be construed to authorize an increase of the bonded indebtedness of said city, beyond the amount now authorized by law.

### ARTICLE XXXIV.

#### *Buildings for City Use, Etc.*

Sec. 60. The council shall have the authority to erect, buy, sell and lease all buildings necessary for the use of the city government, or any of its departments, and to provide for, and regulate the same and establish and maintain public hospitals, and to receive donations, gifts or bequests for the same, in trust or otherwise.

### ARTICLE XXXV.

#### *Health.*

Sec. 61. The council shall have the authority to ordain and enforce such regulation within said city, as shall be necessary or proper to preserve the health of the inhabitants of said city, and to

secure them from disease; to require and compel the abatement and removal of all nuisances within said city, at the expense of the person or persons causing the same, or of the owner or owners of the ground whereon the same shall be; to prevent or regulate slaughter houses within said city; or the exercise of any offensive or unhealthy business, trade or employment therein; to prevent the keeping of any stale meats, fish, vegetables or other matter, or depositing the same, or dirt, rubbish or offal, upon any lot, street, alley or square within the said city, or upon the banks of any streams within the limits thereof.

Sec. 62. The council shall have power by ordinance to regulate the sale of cocaine, morphine, opium and poisonous drugs within said city and to prescribe punishment, including fine and imprisonment, for the violation of any such ordinance, and to provide that one or more convictions for violating the same, shall operate as revocation of the license of any druggist or pharmacist holding a license under said city.

Sec. 63. The board of affairs shall in the month of June, nineteen hundred and nine, and in said month of every second year thereafter, appoint a suitable person, who shall be a practicing physician, as health commissioner, whose term of office shall be for two years and until his successor is appointed and qualified.

The members of the board of affairs, the mayor and health commissioner shall comprise the board of health of said city. The board of health shall have power to abate all nuisances within said city, and it shall do and perform all such other duties and exercise such other powers as may be required of, or conferred upon them, by legal ordinances of said city. The council of said city shall provide by ordinance the way and method of trying and abating such nuisances, and shall prescribe all penalties that may be proper and necessary for such purpose. The board of health shall have power to summon witnesses, hear testimony and to do any and all other things necessary and proper in the performance of such duties under this act and under the general laws of the state, in such cases made and provided.

#### ARTICLE XXXVI.

##### *Police Department.*

Sec. 64. The mayor shall nominate a chief of police, and such

number of policemen as may be authorized by ordinance, from time to time, said nomination to be subject to confirmation by the council. Council shall prescribe by ordinance, such mental and physical examinations for applicants for appointment to the police force, as it shall deem proper. Policemen, when nominated and confirmed by the council, shall hold office during good behavior. The term of the chief of police shall be two years.

No person shall serve or exercise any of the duties of a police officer, until he shall have been confirmed as such by the affirmative vote of a majority of all the members elected to the council, unless he has been appointed a special officer as hereinbefore provided for.

Policemen may be removed and discharged at any time by the mayor for good cause, in which event he shall report such suspension, together with the reason therefor to the council at its next meeting. The council shall consider such suspension and may veto the suspension and re-instate such policeman, or confirm the suspension for such period as they may fix. *Provided, further,* that the council shall have the power to suspend without pay the chief of police or any policeman against whom charges are preferred.

If the chief of police or any police officer shall engage in any primary election, convention, or election in which any officer in this city, county or state is to be nominated or elected, in such a way as to become offensive or obnoxious to any class of law abiding citizens, he shall be immediately suspended by the mayor, and charges preferred and a trial had before the council, and upon a three-fifths vote of all the members he may be discharged. Any officer so dismissed, shall not be eligible to re-appointment as a police officer.

#### ARTICLE XXXVII.

##### *Fire Department.*

Sec. 65 The board of affairs shall appoint the salaried members of the fire department, who shall be subject to the same regulations as policemen, and who shall hold their office during good behavior. They may be removed or suspended in the same manner as police officers.

#### ARTICLE XXXVIII.

##### *No Free Passes or Other Gifts.*

Sec. 66. No person, firm or corporation shall give, or offer to

give to any city officer, employee or agent, nor shall any city officer, employee or agent be permitted to accept, receive or solicit from any person, firm or corporation, any free pass or free transportation or free gift of the same, for himself or other person, on any railroad, street car or traction line, or any free gift of any water, light or heat, or any badge, ring, watch or other thing of value, from any person, firm or corporation having any franchise or contract from, under, or with said city, or from any other officer, agent or employee of said city, or from any other person whatsoever, who may in any way or manner, be affected by the performance or non-performance of any official duty or obligation by such officer, employee or agent of said city, and the acceptance or solicitation of any thing herein forbidden, shall be absolute ground of removal or dismissal from office, by the council in the case of an elective office, and by the appointing power in the case of an appointive office.

The circuit court of Berkeley county, upon petition of ten voters of said city, shall have like power of removal of all officers, employees and agents as given in this act to any city officer, in any way or manner; *provided*, that the health commissioner and all policemen and firemen, together with the chiefs thereof, shall have the right to accept, and street railway companies shall have the right to give, such health commissioner, policemen and firemen, free transportation over any street railway in said city, while in the performance of their duties.

#### ARTICLE XXXIX.

##### *Existing Officers and Ordinances.*

Sec. 67. All officers, agents and employees of the city of Martinsburg, shall remain in and hold their offices and discharge the duties thereof, until the first day of June, nineteen hundred and nine, and thereafter, until their successors are qualified, and all existing officers not provided for by this act, shall be abolished as of the first day of June, nineteen hundred and nine, except this section shall not apply to hold-over councilmen, or councilmen elected on the second Monday of May, nineteen hundred and nine, and, firemen, who shall hold office until their successors are elected or appointed and qualified as provided in this act.



All valid ordinances and regulations passed and adopted by the council, on or before the first day of June, nineteen hundred and nine, and not inconsistent with this act, shall be and remain in full force, unless and until repealed, and the council now in office shall continue to exercise its powers as such, until the first day of June, nineteen hundred and nine.

Sec. 68. Justices and constables elected in Arden, Hedgesville and Opequon districts at the election in November, nineteen hundred and eight, and whose jurisdiction is co-extensive with said districts as of that date, and whose office may be located within the boundaries as made in this act, shall continue to exercise rights and offices within said district at the date of their election, and they shall not be affected during their term of office by the extended lines of the city of Martinsburg, as provided in this act, and their acts performed, shall, during their term of office, be as lawful as though their district had not been changed in this act.

After the first day of January, nineteen hundred and thirteen, so much of said districts of Arden, Hedgesville and Opequon, as are embraced within this act, shall be deducted from said district, in the jurisdiction of such district officers therein elected, except as provided in their jurisdictional powers by the laws of West Virginia.

Sec. 69. All toll roads with gates as now located within the corporate limits of this act, are hereby authorized and empowered to collect toll and use their gates until such time as they may elect to remove the same or the city shall acquire by purchase or otherwise their said toll roads within the corporate limits of this act, as streets and public thoroughfares.

Sec. 70. All acts in conflict or inconsistent with this act, are to the extent of any such conflict, hereby repealed.

(House Bill No. 303.)

## CHAPTER 7.

AN ACT to amend and re-enact section two of chapter thirteen of the acts of one thousand nine hundred and five, of the legislature of West Virginia, concerning the charter of the city of Philippi.

(Passed February 26, 1909. In effect from passage. Approved by the Governor March 1, 1909.)

Sec.

2. Fixing corporate limits and boundaries.

*Be it enacted by the Legislature of West Virginia:*

That section two of chapter thirteen of the acts of one thousand nine hundred and five of the legislature of West Virginia, be amended and re-enacted so as to read as follows:

Sec. 2. The corporate limits of said city shall be hereafter as follows: Beginning at a sugar tree on the east bank of the Tygart's Valley river above the present brick and tile factory; thence south 64 degrees, 15 minutes east, 1,307 feet to a stake in the county road; thence north 74 degrees, 40 minutes east, 1,184 feet to a stake; thence north 48 degrees, 22 minutes east, 661 feet to a chestnut tree in W. G. Key's property; thence north 9 degrees, 9 minutes east, 1,505 feet to a stake in the divide on the farm of J. Hop Woods; thence north 25 degrees, 42 minutes west, 629 feet to a stake; thence north 34 degrees, 51 minutes west, 4,570 feet to an apple tree in David Smith's farm; thence north 78 degrees, 27 minutes west, 627 feet to a stake in said farm; thence south 27 degrees, 46 minutes west, 757 feet to a pear tree; thence south 21 degrees, 21 minutes west, 1,620 feet to a stake; thence south 26 degrees, 13 minutes east, 1,460 feet to a stone on the lower side of the pike; thence north 9 degrees, 55 minutes east, 394 feet to the east bank of the Tygart's Valley river; thence with low water mark following the meanderings of the east bank of said river to the beginning.

All acts and parts of acts coming within the purview of this act, and inconsistent herewith, are hereby repealed.

(House Bill No. 311.)

## CHAPTER 8.

AN ACT to amend the charter of the town of Princeton and incorporate the same as "The City of Princeton."

(Passed February 20, 1909. In effect from passage. Approved by the Governor March 1, 1909.)

Sec.	Sec.
1. Corporate name.	26. City funds; disposition of.
2. Corporate boundaries.	27. Duties and powers of council; passage of ordinances; power to maintain and operate water works, electric light plant, etc., granting of licenses.
3. Municipal authorities; compensation.	28. Mayor's docket; how kept.
4. Exercise of corporate powers.	29. Annual levy; how laid.
5. Subordinate officers; term of office; compensation.	30. Annual assessment of property.
6. Eligibility to hold office.	31. Assessor's books; how kept.
7. Election of officers; date of election; term of office.	32. Lien on real estate for taxes.
8. Beginning of term of office.	33. Taxes; collection of; who by; method of.
9. Qualification of voters.	34. Licenses; revocation of; time granted for.
10. Method of holding elections.	35. Condemnation of lands for public use.
11. The vote; how decided.	36. Right to issue city bonds upon approval of voters.
12. Contested elections.	37. Indebtedness for current expenses.
13. Vacancy in office; how filled.	38. Construction and maintenance of streets, roads and bridges.
14. Appointment of additional officers; removal from office.	39. Existing ordinances.
15. Official bond; payable to.	40. Succession to rights and liabilities.
16. Taking oath of office.	41. Sidewalks; construction of; macadamizing and paving of streets.
17. Tenure of office.	42. Council to provide for holding elections.
18. Ineligibility or failure to qualify.	43. Annulment of old charter.
19. Mayor; powers and duties.	44. Inconsistent ordinances repealed.
20. Recorder; powers and duties.	
21. Majority a quorum.	
22. Keeping of minute book.	
23. Reading of minutes.	
24. Vote in council.	
25. Regular and special meetings of council.	

*Be it enacted by the Legislature of West Virginia:*

That the charter of the town of Princeton, in the county of Mercer, granted by the circuit court of said county under chapter forty-seven of the code of West Virginia, be amended and re-enacted so as to read as follows:

Sec. 1. That the inhabitants of that portion of Mercer county, in the state of West Virginia, included in the boundaries described in section two of this act, be, and they are hereby a municipal corporation by the name of "The City of Princeton," by which name they shall have perpetual succession and a common seal, and by which name they may sue and be sued, plead and be impleaded, contract and be contracted with, and purchase, otherwise acquire and hold real estate and personal property needed in the discharge of the functions of government conferred by this charter.

#### *Boundaries.*

Sec. 2. The corporate boundaries of the said city shall be as follows, that is to say:

Beginning at the bridge where the Raleigh and Kanawha turnpike crosses Glady Fork, and thence running down Glady Fork to

Brush creek; thence down Brush creek to the mouth of Board Camp branch; thence due east crossing the center line of the Deepwater railroad, as shown by the map and profile of the location of said road filed in the office of the clerk of the county court of Mercer county, West Virginia, on the twenty-third day of March, one thousand nine hundred and four, to a point fifty feet beyond said center line at right angles thereto; thence parallel to the center line of the location of said railroad as shown upon said map, and fifty feet distant therefrom to Christian Fork, which is a point eastward from the residence of William Oliver; thence a straight line to the old Alvis mill on Brush creek; thence a straight line to the residence of Elliott Blankenship, including said residence within the corporate limits; thence a straight line, including the residence of said Blankenship within the corporate limits as aforesaid, touching the residence of Saunders Lewis and including the same within the corporation to a point in the center line of the Raleigh and Kanawha turnpike road; thence a straight line touching the residence of I. W. Walker and including the same within the corporate limits to Gladly Fork; thence down the same to the beginning.

#### *Municipal Authorities.*

Sec. 3. The municipal authorities of the said city shall consist of a mayor, a recorder and five councilmen to be elected by the voters of the whole city, who together shall form a council and who shall receive such compensation as the council shall from time to time determine, and shall not be increased or diminished during their term of office.

#### *Exercise of Corporate Powers.*

Sec. 4. All the corporate powers and functions pertaining to said city shall be exercised by its council, or under its authority, in the corporate name of the city, unless otherwise provided by state law or municipal ordinance.

#### *Subordinate Officers.*

Sec. 5. The mayor shall nominate, and, by and with the advice

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and consent of the council, shall appoint a superintendent of streets, city engineer, who shall be the same person as superintendent of streets, chief of police, city attorney, an assessor, a treasurer, and all other officers whose offices may be established by ordinance of the council; and such officers shall hold the respective offices to which they are appointed during the pleasure of the council and until their successors are appointed and qualified. These several offices, or any two or more of them may be held by the same person, and such officers shall receive such compensation as the council may prescribe, by ordinance or order, and the same shall not be increased or diminished during the term for which the appointment was made.

#### *Eligibility of Officers.*

Sec. 6. No person shall be eligible to the office of mayor, recorder or councilman, unless at the time of his election he is legally entitled to vote in the city election for member of the common council, and was for the preceding year assessed with taxes upon real or personal property within the said city of the assessed value of two hundred dollars, and shall actually have paid the taxes so assessed.

#### *Election of Officers.*

Sec. 7. On the first Tuesday in May, one thousand nine hundred and ten, and every year thereafter on the first Tuesday in May, there shall be elected by the qualified voters of said city, a mayor, a recorder, and five councilmen. The term of office of said mayor, recorder, and councilmen shall be one year, commencing on the first day of June next after their election, and until their successors shall be elected and qualified.

Sec. 8. The mayor, recorder and councilmen elected on the first Tuesday in May, one thousand nine hundred and ten, as hereinbefore provided, shall assume the duties of their respective offices on the first day of June, one thousand nine hundred and ten; and the terms of all officers elected at any subsequent election shall begin on the date and continue as provided in section seventeen of this act.

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*Who Are Voters.*

Sec. 9. Every male person residing in said city shall be entitled to vote for all officers elected under this act, but no person who is a minor or of unsound mind or a pauper or who is under conviction of treason, felony, or bribery in an election, or who has not been a resident of this state for one year and of said city for six months next preceding the election at which he desires to vote, shall be permitted to vote therein.

*General Elections.*

Sec. 10. In all elections by the people the mode of voting shall be by ballot, but the voters shall be left free to vote an open, sealed or secret ballot, as they may elect. The elections in said city shall be held and conducted and the result thereof certified, returned and finally determined under the laws in force in this state relating to general elections, except that the persons conducting said elections shall, on the day after the election is held, deliver the ballots, tally sheets and poll books to the recorder, and thereafter the council of said city shall meet within five days (Sundays excepted) after said election and canvass the returns of said election, and declare the result thereof, and in all respects comply with the requirements of the statute of the state relating to elections. The corporate authorities of said city shall perform all duties in relation to such elections required by general law of the county courts and officers in effect on the date of said election and such succeeding election under this charter. And the provisions of the code in effect on the date of said elections, concerning elections by the people, shall govern such elections and be applicable thereto, and the penalties therein prescribed for offenses relating to elections shall be enforced against the offenders of such corporate elections; and the said act shall have the same force and effect, as if it were specially applicable in such corporate elections and was by this act re-enacted *in extenso*, except as above modified as to the time in which the returns of election and canvass thereof shall be made.

*Tie Vote. How Decided.*

Sec. 11. Whenever two or more persons receive an equal num-

ber of votes for mayor, recorder or councilman, such tie shall be decided by the council in existence at the time the election is held; *provided*, that the council in office at the time of the institution of such contest proceedings shall hold over and remain in office for the purposes of passing upon and deciding such contest and for such purposes only; and nothing herein provided shall be construed to interfere with the duties, power and authority of the new or incoming council.

#### *Contested Elections.*

Sec. 12. All contested elections shall be heard and determined by the council in existence at the time the election is held, and the contest shall be made and conducted in the same manner as provided for in contests for county and district officers, and the council by their proceedings in such cases shall as nearly as practicable, conform with like proceedings of the county court in such cases.

#### *Vacancy in Office.*

Sec. 13. Whenever a vacancy from any cause shall occur in any office, the council shall by a majority vote of those present fill such vacancy.

#### *Appointment of Additional Officers and Defining Their Duties and Fixing Compensation for such Officers.*

Sec. 14. The council shall also have authority to provide by ordinance, for the appointment of such other officers as shall be necessary and proper, to carry into full force and authority the power, capacity, jurisdiction and duties of said city, which are or shall be vested therein, or in the council, or in the mayor or any other officer or body of officers thereof, and to grant to the officers so appointed the power necessary or proper for the purposes above mentioned. The council by ordinance shall define the duties of all officers so appointed or elected as aforesaid, and may provide them reasonable compensation; which shall be payable as the council shall provide, which compensation shall not be increased or dimin-

ished during their term of office, and shall require and take from all of them whose duty it shall be to receive its funds, assets or property, or have charge of the same, such bonds, obligations, or other writing as they shall deem necessary or proper to insure the faithful performance of their several duties. All officers elected may be removed from office for malfeasance, nonfeasance or misfeasance by the council; any appointed officer who holds his office at the pleasure of the council, may be removed from his office at any time without notice. The chief of police shall have all power, rights and privileges within the corporate limits of said city in regard to the arrest of persons, the collection of claims and the execution and return of process, that can be legally exercised by a constable of a district within this state; and may without having any warrant or other process therefor, arrest any person who commits any offense against the laws of this state or infraction of the ordinances of said city, in his presence. He shall be *ex-officio* the keeper of the city jail, and have charge of the city prisoners confined therein, and may confine any person arrested by him in the city jail until such time as the charges against such person can be inquired into by the mayor. Any person fined by the mayor for infraction of any of the ordinances of the city, may pay such fine to either the mayor or the chief of police; and the said chief of police and his sureties shall be liable to all fines, penalties and forfeitures that a constable of a district is liable in the same court that the said fine, penalties and forfeitures are now recovered against a district constable. It shall be the duty of the treasurer to collect the city taxes, licenses, levies, assessments and other such city claims as are placed in his hands for collection by the council, and he may distrain and sell therefor in like manner as a sheriff may distrain and sell for state taxes, and he shall in all other respects have the same powers as a sheriff to enforce the payment and collection thereof.

#### *Bond.*

Sec. 15. All bonds, obligations or other writing taken in pursuance of any provisions of this act or under the provisions of any order of said city, shall be made payable to the "City of Princeton," and the obligors therein and their heirs, executors, administrators and assigns bound thereby shall be subject to the



same proceedings on such bonds, obligations or writings for enforcing the conditions of the term thereof, by motion or otherwise, before any court of record or justice of the peace having jurisdiction thereof, held or acting in or for said Mercer county, or any district thereof or elsewhere, that the sheriff or collector of said county and his sureties are or shall be subject to on his bond taken for the enforcement of the duties in the payment of the county levy.

#### *Oaths of Officers.*

Sec. 16. The mayor, recorder and councilmen and all other officers provided for in this act, shall each, before entering upon the duties of their office, and within fifteen days after receiving their certificates of election or appointment, take the oath or affirmation prescribed by law for all officers in this state, and make oath or affirmation that they will truly, faithfully and impartially, to the best of their ability, discharge the duties of their respective offices so long as they continue therein. Said oath or affirmation may be taken before any person authorized to administer oaths under the laws in force at the time the same is taken or before the mayor or recorder of said city; but in any event a copy of said oath of said officer shall be filed with the recorder.

#### *Tenure of Office.*

Sec. 17. The mayor, recorder and councilmen, and all other elected officers, shall enter upon the duties of their offices upon the first day of June next after their election, and all appointed officers shall enter upon the duties of their offices as soon as they have qualified; and all officers shall remain in office, until their successors are elected and qualified or until removed therefrom.

#### *Ineligibility or Failure to Qualify.*

Sec. 18. If any person elected to any office shall not be eligible thereto under the provisions of this act, or shall fail to qualify as herein required, the council shall declare his said office vacant and proceed to fill the vacancy as required by this act.

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*Powers and Duties of Mayor.*

Sec. 19. The mayor shall be the chief executive officer of the city, and shall take care that the orders, by-laws, ordinances, acts and resolutions of the council thereof are faithfully executed. He shall be *ex officio* a justice and conservator of the peace within the city, and shall within the same have, possess and exercise all the powers and perform all the duties vested by law in a justice of the peace, except he shall have no jurisdiction in civil cases or causes of action arising out of the corporate limits of the city unless the defendant resides or is found therein and process therein served upon him. He shall have the same power to issue attachments in a civil suit, as a justice of his county has, but in such case he shall have no power to try the same, but such attachment shall be made returnable and heard before a justice of the peace of his county. Any warrant or other process issued by him may be executed at any place in the county. He shall have control of the police of the city and may appoint special police officers whenever he deems it necessary, and may suspend any police officer until the next regular meeting of the council. And it shall be his duty especially to see that the peace and good order of the city are preserved, and that persons and property therein are protected, and to this end he may arrest or cause the arrest and detention of all violators of the laws of this state and ordinances of the city, before issuing his warrant therefor if the offense is committed in his presence. He shall have power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof, and in default of such payment he may commit the party in default to the jail of the county of Mercer or other place of imprisonment, used by said corporation, if there be one, until the fine or penalty and the costs be paid, but the term of imprisonment in such cases shall not exceed thirty days. And in all cases when a person is sentenced to imprisonment or to the payment of a fine of ten dollars or more (and in no case shall a judgment for a fine be for less than ten dollars if the defendant, his agent or attorney object to a less fine being imposed), such person shall be allowed an appeal from such decision, to the criminal court of the county of Mercer, upon the execution of an appeal bond with security deemed sufficient by the mayor, and the costs in the criminal court

in case said judgment be affirmed, with condition that the person proposing to appeal, will perform and satisfy any judgment which may be rendered against him by the criminal court on such appeal. If such appeal be taken the warrant of arrest (if any), a transcript of the judgment, the appeal bond and other papers in the case, shall be forthwith delivered by the mayor to the clerk of the said court, and the court shall proceed to try the case as upon an indictment or presentment, and render such judgment, including costs, as the law and the evidence may require. The mayor shall from time to time recommend to the council such measures as he may deem needful to the welfare of the city. The expense of maintaining any person committed to the jail of the county by him, except it be to answer to an indictment, shall be paid by the city and taxed as costs against the defendant.

#### *Powers and Duties of Recorder.*

Sec. 20. The city recorder shall keep an accurate record of the proceedings of the council, and have charge of and preserve the records of the city, and in case of the absence from the city or in case of the sickness or inability of the mayor to act, or during any vacancy in the office of mayor, he shall perform such duties of the mayor as pertained to him as chief executive of the city, and be vested with all powers necessary for the performance of such duties, but shall not be vested with any of the authority of the mayor pertaining to civil suits. He shall be a conservator of the peace within the city.

#### *Quorum.*

Sec. 21. The presence of a majority of the council, shall be necessary to make a quorum for the transaction of business.

#### *Record of Minutes and Ordinances.*

Sec. 22. The council shall cause to be kept by the recorder, in a well bound book to be called the "minute book," an accurate record of all its proceedings, ordinances, acts, orders and resolutions, and in another to be called "ordinance book," accurate copies of all general ordinances adopted by the council; both of

which shall be accurately indexed and open to inspection of any one required to pay taxes in the city, or who may be otherwise interested therein. All oaths and bonds of officers in the town, and all papers of the council, shall be endorsed, filed and securely kept by the recorder. The bonds of officers shall be recorded in a well bound book to be called "record of bonds." The recorder shall perform such other duties as by ordinance of the council may be prescribed. The transcripts of ordinances, acts, orders and resolutions certified by the recorder under the seal of the city, shall be admissible in evidence in any court or before any justice.

#### *Reading of Minutes.*

Sec. 23. At each meeting of the council the proceedings of the last meeting shall be read and corrected, if erroneous, and signed by the presiding officer for the time being. Upon the call of any member the ayes and noes on any question shall be taken and recorded by the recorder in the "minute book." The call of the members for such vote shall be made alphabetically.

#### *Who Shall Vote in Council.*

Sec. 24. The mayor and recorder shall have votes as members of the council, and in case of a tie the presiding officer for the time being shall have the casting vote.

#### *Meetings of the Council.*

Sec. 25. The regular meetings of the council shall be publicly held at such times and at such places in the city, as they shall from time to time ordain and appoint; and it shall be lawful for the council by ordinance, to vest in any officer of the city, or in any member or number of members of their own body, the authority to call special meetings and prescribe the mode in which notice of such special meetings shall be given. If a majority of the members of council do not attend any regular or special meetings, those in attendance shall have authority to compel the attendance of absent members under such reasonable penalties, as they may think proper to impose by ordinance. All questions put to a vote,

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except such matters as hereinafter provided for, shall be decided by a majority of the members present.

*To Whom Money of City Shall be Paid.*

Sec. 26. All moneys belonging to the city shall be paid over to the city treasurer; and no money shall be paid out by him, except as the same shall have been appropriated by the council and upon an order signed by the mayor and recorder, and not otherwise, except at the expiration of his term of office upon the order of the council signed by the mayor and recorder, he shall pay over to his successor all the money remaining in his hands.

*Duties and Powers of Council.*

Sec. 27. The council of said city shall have power to lay off, vacate, close, open, alter, grade and keep in good repair the roads and streets, alleys, pavements, sidewalks, crosswalks, drains, sewers and gutters therein, for the use of the citizens and the public and to improve and light the same, and keep them free from obstructions of every kind; to regulate the width and kind of pavements and sidewalks, footways, drains and gutters and cause the same to be kept in good order, free and clean by the owners and occupants of the real property next adjacent thereto: to establish markets, prescribe the time for holding the same, provide suitable and convenient buildings therefor, and prevent the forestalling of said markets; to prevent injury or annoyance to the public or to individuals from anything dangerous, offensive or unwholesome; to prohibit or regulate slaughter houses, tan houses and soap factories within the city limits, or the exercise of any unhealthful or offensive business, trade or employment; to abate all nuisances within the city limits or to compel the abatement or removal thereof at the expense of the person causing the same or by or at the expense of the owner or occupant of the ground on which said nuisance is placed or found; to be filled up, raised or drained, by or at the expense of the owner, any city lot or tract of land covered or subject to be covered by stagnant water; to prevent horses, hogs, cattle, sheep or other animals, and fowls of all kinds from going or being at large in such city, and as one

means of prevention to provide for impounding or confining such animals and fowls at the expense of the owner thereof, and upon the failure of the owner to reclaim, for the sale thereof; to protect places of divine worship and to preserve order in and about the premises when and where such worship is held; to regulate the keeping and sale of gunpowder and other inflammable or dangerous substances; and to provide for the regular building of houses or other structures and to provide for the kind of material to be used in the construction thereof, and for the making and maintaining of division fences by the owners of adjoining property, and for the proper drainage of city lots and other parcels of land by or at the expense of the owner or occupant thereof; to provide against danger or damage by fire; to punish assault and battery; to prohibit the keeping or loitering in or visiting houses of ill fame, or loitering in saloons or upon the streets; to prevent lewd or lascivious conduct, the sale or exhibition of indecent pictures or papers or other representation; to prevent adultery and fornication; to prohibit the carrying of concealed or dangerous weapons within the corporate limits of said city; to punish drunkenness; to punish larceny where the amount stolen is less than twenty dollars; to prevent gambling and the keeping and using of slot machines and gaming devices; to prohibit anything against the good morals and common decency and to fix punishment therefor; to prevent the desecration of the Sabbath day, profane swearing, the illegal sale of intoxicating drinks, mixtures or preparations; to protect the persons of those residing or being in said city; to appoint, when necessary or advisable a police force, permanent or temporary, to assist the chief of police in the discharge of his duty, and who when appointed, to have the same power and authority in and about the arrest of offenders, as the chief of police may have; to build or purchase, or lease a suitable place of imprisonment within said city, for the safe keeping or punishment of persons charged with or convicted of a violation of the ordinances of the city, or they may adopt the county jail of Mercer county for the purpose; to erect or authorize or prohibit the erection of gas, water works, or electric works or all of them within the city limits or near the same; to require any company or person furnishing gas, electricity or water to said city for the inhabitants thereof, to put in standard meters for the measurement thereof and may

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appoint any person to inspect the meters and remove same, if not standard and in good order; to prevent injury to such works, or the pollution of any gas or water used or intended to be used by the public or any individual; to require the extension of gas and water lines by such respective companies, to any and all parts of the said city when said council may deem the same necessary; to provide for and regulate the weighing of hay, coal, lumber and other articles sold or kept within said city, and to establish rates and charges for the weighing and measuring thereof; to create by ordinance such committees and delegate such authority thereto as may be deemed necessary or advisable; to provide for the annual assessment of the taxable property therein and for the revenue for the city for municipal purposes and to appropriate such revenue to its expenses; and generally to have power to take such measures as are deemed necessary or advisable, to protect persons or property, public or private within the city; to preserve peace, quiet and good order therein and to promote the health, safety, comfort and well being of the inhabitants thereof; to organize one or more fire companies and provide necessary apparatus, tools, implements, engines, or any of them, for their use, and in their discretion to organize a paid fire department; to make regulations with respect to the erection and location of the telephone, telegraph, electric light or other poles within said city, and the extension of any wires, lines and poles by any individual or corporation; to grant and regulate all franchises in, upon, over and under the streets, alleys and public ways of said city, under such restriction as shall be provided by ordinance, but no exclusive franchise shall be granted by said council to any individual or corporation, nor shall any franchise be granted for a longer period than fifty years.

The council shall have authority to pass all ordinances not repugnant to the constitution and laws of the United States, and of this state, which shall be necessary and proper to carry into full effect the power, authority, capacity and jurisdiction which is or shall be granted to or vested in the said city, or in the council, or in any officer or body of officers of said city, and to enforce any and all of their ordinances by reasonable fines and penalties, and by imprisoning the offender or offenders, and upon failure to pay any fine or penalty imposed may compel the offender to labor with-

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out compensation at and upon any of the public works or improvements undertaken or to be undertaken by said city, or to labor at any work which the said council may lawfully employ labor upon, at such reasonable rate per diem as the council may fix, until any fine or fines and costs upon any such offender by said city have been fully paid and discharged, after deducting reasonable charges of support while in the custody of the officers of the city; *provided, however,* that no fine shall be imposed exceeding thirty dollars and costs, and that no person shall be imprisoned or compelled to labor as aforesaid, for more than thirty days for any one offense. And in all cases where a fine is imposed for an amount exceeding ten dollars and costs, or a person be imprisoned, or be compelled to labor as aforesaid for a greater term than ten days, an appeal may be taken from such decision, upon the terms and conditions as appeals are taken from the judgment of a justice of this state. Such fines and penalties shall be imposed and recovered, and such imprisonment inflicted and enforced, by and under the judgment of the mayor of said city, or, in case of his absence or inability to act, by the recorder of said city, or if he be unable to act, then by any member of the council to be appointed by the council for that purpose; and for his services in trying cases, whether civil, criminal or infractions against the ordinances of the city, the mayor shall be entitled to receive such fees as are paid to justices of the peace for similar services, but in cases of infractions of the ordinances of the city, the mayor shall not be paid such fees unless they are collected from the defendant and in all such cases the chief of police shall be entitled to receive such fees as are paid to constables for similar services, except that for cases for the infraction of the ordinances of the city, he shall not receive such fees unless collected from the defendant; *provided, further,* that the fee for making any arrest shall be one dollar, to be paid to the officer making the arrest, whether such officer be the chief of police or other officer, if collected from the defendant but not otherwise. In addition to the powers above enumerated, the said city council shall have power to build, construct, maintain and operate a sufficient sewage system and water works, as may be necessary for the proper supply of water to the inhabitants of the said city, for both public and private use, and said city shall have the power to purchase or condemn any water works now in the



said city or hereafter placed therein by any party other than said city, whenever the council of said city shall deem proper, and such order shall have been ratified by a vote of the qualified voters of said city, at an election called for that purpose, with due notice, and at least two-thirds of the votes cast at said election, shall vote for the ratification of the order of said council to purchase or condemn said water works; and the said city shall have the power to enlarge the said water works, if so purchased or condemned, by putting additional reservoirs either within or out of said city; and the said city shall have the right, if its council shall deem proper, and the order of said council be ratified by vote as aforesaid, to build, construct, maintain, and operate such water works in the said city as may be deemed proper without the purchase or acquisition of any water works then in said city, and said city shall have the right to lay pipes and mains for the proper distribution of said water, either in or out of said city, as shall be necessary for the proper distribution of same, and for that purpose may acquire by lease, purchase or condemnation all such land as shall be necessary, either within or without the said city, or they may contract for such work to be done, in either event to supply adequate supply of pure, healthful water for said city and do all things necessary to supply the said city and the inhabitants thereof with water as aforesaid; and the said city may acquire by purchase or condemnation, any electric light plant now in said city or hereafter placed therein by any party other than said city, and shall have the right to build, construct, maintain and operate such plant for furnishing electricity for said city, and for the inhabitants thereof, but no electric light plant shall be purchased, condemned, or built or operated by the said city, without the matter being first submitted to the qualified voters of said city at an election called and held as aforesaid, and the same be ratified by a two-thirds vote of all votes cast at said election. Whenever anything for which a state license is required, is to be done in said city, the council may require a city license therefor and may impose a tax thereon, for the use of said city, and whenever said city license is granted by the council, for the sale of spirituous, vinous or malt liquors, or drink of like nature, the county court may grant a state license for the sale thereof within the corporate limits of said city, but no state license therefor

shall be granted within said city, by the county court or within four miles of the corporate limits thereof, unless the council thereof first grants a city license. The council shall require from every person so licensed to sell spirituous, vinous or malt liquors, a bond with good security, to be approved by the council, in a penalty of at least three thousand dollars, payable to said city, by its corporate name, conditioned as prescribed in section twenty-two of chapter thirty-two of the code of West Virginia, and may revoke such license at any time the conditions of said bond are broken, upon ten days' previous notice to the person holding the same. And suits may be prosecuted and maintained on such bond as prescribed in said section of said chapter, by any person for the same causes, in the same manner and to the same extent, as upon the bonds mentioned in said section, and all provisions of said section in relation to the bonds required by this section; in addition to the powers herein mentioned, the council shall be vested with all powers that are now or may be conferred upon such council in this state by general law, not repugnant to the provisions of this act.

#### *Mayor's Docket.*

Sec. 28. A well-bound book, indexed, to be denominated the "Mayor's Docket," shall be kept in the office of the mayor, in which shall be noted each case brought before or tried by him, together with the proceedings therein, including a statement of the complaint, the warrant or summons, the return, the fact of appearance or non-appearance, the defense, the hearing, the judgment, the cost, and in case the judgment be one of conviction, the action taken to enforce the same. The record of each case shall be signed by the mayor and the original papers thereof, if no appeal be taken, shall be kept together and preserved in his office.

#### *Annual Levy.*

Sec. 29. The council shall be governed in all respects in laying the annual levy, or any additional or special levy, by chapter nine of the acts of the extraordinary session of the legislature of West Virginia, one thousand nine hundred and eight, except they may

include a poll tax of not exceeding one dollar each year, upon each able-bodied man therein, who is above the age of twenty-one years and not over fifty years of age; which poll tax shall be used exclusively for the opening, improving and maintaining roads, streets and alleys of the city, and shall designate the same as the "Street Tax"; and the said council may also impose such license tax, upon dogs and other animals as they deem proper, and collect the same from the owners of such animals, as other taxes are collected, and prescribe such rules, regulations and penalties governing the payment of such tax on animals, as they may deem reasonable.

*Annual Assessment.*

Sec. 30. It shall be the duty of the assessor to make an assessment of the property within the city subject to taxation, substantially in the manner and form in which assessments are made by the assessors of the county, and return the same to the council on or before the first day of June of each year, and for this purpose he shall have all the powers conferred by law upon county assessors. He shall list the number of dogs and other animals subject to a license tax in the city and the names of the persons owning the same, which list shall be returned to the council at the same time his assessment books are returned. But in making his assessments on real and personal property he shall be governed by the assessment on real and personal property for state and county purposes for said year, and the value placed on said property shall not exceed the value of such assessment for county and state purposes. In order to aid the assessors in ascertaining the property subject to taxation by said city, he shall have access to all books and public records of said Mercer county without expense to him or said city and he shall have the same power and be subject to the same penalties in ascertaining and assessing the property and subjects of taxation in said city, as are granted and imposed on the county assessors throughout the state by general law; and the council shall have authority to prescribe by general ordinance, such other rules and regulations as may be necessary to enable and require such assessor to ascertain and properly assess all property liable to be taxed by said city, so that such assessment and taxation shall be uniform and equal, and the council may

enforce such rules and regulations by reasonable fines to be imposed on any one failing to comply therewith.

*Assessor's Books.*

Sec. 31. The assessor shall make two copies of his assessment books each year and extend the taxes in each book and deliver the same when completed and sworn to, to the city council, one of which shall be retained in the office of the recorder and the other delivered to the city treasurer, taking his receipt therefor.

*Lien for Taxes.*

Sec. 32. There shall be a lien on all real estate within said city for the city taxes assessed thereon, and for all fines and penalties assessed to or imposed upon the owners thereof, by the authorities of said city, including expenses for making sidewalks and streets from the time the same are so assessed or imposed, which shall have priority over all the other liens except taxes due the United States and the lien for taxes due to the state, county or district; and such lien may be enforced by the council in the same manner provided by law for the enforcement of the lien for county taxes. If any real estate within said city be returned delinquent for the non-payment of city taxes due thereon, a copy of said delinquent list shall be certified by the council to the auditor of this state and the same may be sold for city taxes, interest and commissions thereon in the same manner, at the same time and by the same officers as real estate is sold for state taxes; and return of such sales made to and a deed executed therefor, if not redeemed, in the same manner and with like effect, as the return of sales of real estate sold for state taxes are made and deeds executed therefor to purchasers.

*Collection of Taxes.*

Sec. 33. It shall be the duty of the city treasurer when the extended copies of the assessor's books are completed, to receive a copy thereof, receipting to the council for the same, and it shall be his duty to collect from the parties the entire amount of the taxes with which they are severally charged therein, and may pro-

ceed to collect the same at any time after the first day of August, and may enforce the payment thereof by levy upon the personal property and sale thereof, of the person so charged with taxes at any time after the first of October next, after said taxes are assessed; said taxes shall be a lien upon the property upon which they are assessed, from and after the time the assessor's books are completed, verified and returned to the city council, and he shall write the word "paid" opposite the name of each person who pays the taxes against him and shall also give to the person paying such taxes a receipt therefor; *provided, however,* that said treasurer may distrain at any time, for any taxes assessed against a person who is about to remove or who has removed from said city after such taxes are assessed, and the books returned as aforesaid. He shall also receive such other moneys of the city as he is authorized by this act to receive, and also all moneys ordered by the council to be paid to him, giving receipt therefor to the parties paying the same, and shall keep an accurate, itemized account of all moneys received by him, and his books shall at all times be open for the inspection of the mayor, council, city recorder and to any taxpayer of the city. He shall also make up a monthly statement of the money received by him and the amount paid out by him and to whom, showing the amount in his hands from all sources, and shall post the same in the mayor's office on the last day of each month. He shall pay out the money in his hands only upon the order of the city council, upon orders signed by the mayor and the recorder. He shall on or before the last meeting of the council in each year just before the expiration of the term of office of the mayor, and at such other times as the council may require, present to the council a full and complete statement of all the moneys which he is chargeable or that have been received by him and not previously accounted for, and shall at the same time, in like manner, furnish a complete statement, by separate items of all disbursements made by him during such period, with his vouchers evidencing the same. He shall receive all taxes upon licenses and receipt to the party paying the same, by endorsement upon the permit granted by order of the council, or mayor as the case may be. He shall receive upon all money coming into his hands and paid out by him as his compensation for receiving and disbursing

the same, such sum as may be fixed by the council not to exceed five per cent thereof. He shall upon the expiration of his term of office turn over to the council all books and other property in his possession belonging to the city, except the money in his hands, which he shall turn over to his successor upon the order of the council, as hereinbefore provided; and shall, before entering upon the duties of office, execute a bond with good security payable to said city in a penalty of not less than five thousand dollars, conditioned that he will faithfully discharge the duties of his office and account for and pay over as required by law and the orders, ordinances, rules and regulations of the council of said city all money which shall come into his hands, which bonds shall be subject to the approval of the council. He shall be chargeable with all the city taxes, levies and assessments and money of the city which shall come into his hands and shall account therefor.

#### *License.*

Sec. 34. The council shall prescribe by ordinance the time and manner in which licenses of all kinds shall be applied for and granted, and shall require the payment of the tax thereon to the city treasurer before the delivery thereof to the person applying therefor. The council may revoke any such license for a breach of any of the conditions or for other good cause shown, but the person holding license must first have reasonable notice of the time and place of hearing and adjudicating the matter, as well as the cause alleged; and shall be entitled to be heard in person or by counsel, in opposition to such revocation. The term for which license provided for in this charter shall be granted shall be governed by general law providing for state license.

#### *Condemnation of Land for Public Use.*

Sec. 35. The council shall have the right to institute and prosecute proceedings in the name of the city for condemnation of real estate, for streets, alleys, roads, drains, sewers, market grounds, city prison, city hall, water works, electric light plant or other works, or purposes of public utility. Such proceedings shall conform to the provisions of chapter forty-two of the code of West

Virginia, and the expenses thereof shall be borne by the city, except in cases where it is proper under said chapter to charge said expenses or any part thereof against the defendant.

*Provisions for Bonding said City.*

Sec. 36. The council of the said city shall have the right to bond the said city for the purpose of paving the said streets, or for other permanent improvement whenever the council thereof may deem the same necessary, but the aggregate indebtedness of the said city for all purposes shall never at any time exceed five per centum of the assessed valuation of the taxable property therein according to the last assessment next preceding said date, and the said council shall provide a fund for the payment of the interest annually on the said indebtedness so created and to pay the principal thereof within and not exceeding thirty-four years; *provided*, that no debt shall be contracted hereunder, unless all questions connected with the same be first submitted to a vote of the qualified voters of said city, and have received three-fifths of all the votes cast for and against the same.

*No Indebtedness to be Created for Current Expenses.*

Sec. 37. The council of the said city shall not at any time or for any purpose, create any indebtedness against the said city except as provided in the next preceding section, exceeding the available assets of the said city for the current year, and if the said council shall create such indebtedness or issue orders on the said city for an amount exceeding the amount of money collected for that year for said city from all sources and the amount of money then in the treasury appropriated, the members of said council shall be severally and jointly liable for the payment of the excess of such indebtedness or orders over the amount of money applicable thereto, and the same may be recovered in any court having jurisdiction thereof.

*Provided, however*, this shall not be applicable to such members who have voted against said excess, and *provided further*, that the vote of each member of council shall be recorded.

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*Streets, Roads and Bridges.*

Sec. 38. The said city shall construct, conduct and maintain its own roads and streets, and by reason thereof shall not be required to pay any district or county road levies, for the construction and maintenance of roads outside of the city limits.

*Existing Ordinances.*

Sec. 39. All ordinances, by-laws, resolutions and rules of the town of Princeton in force on the day preceding the passage of this act, which are not inconsistent therewith, shall be and remain in full force over the whole boundary of said city of Princeton as established by this act, until the same are amended or repealed by the council of said city, and the officers elected on the first Thursday in January, one thousand nine hundred and nine, in the town of Princeton shall remain in office until their successors under this act are elected and qualified, as hereinbefore provided; and after this act takes effect shall have jurisdiction over all the territory embraced in the boundary specified in this act, and shall perform all the duties of such respective officers under this act; but nothing in this act shall be construed or held to in any way effect or impair any of the bonds, obligations or indebtedness of the town of Princeton issued or contracted prior to the passage of this act, but on the contrary, the said city of Princeton shall be liable for all the bonds, obligations and indebtedness of the town of Princeton as though the same had been created in the name of the city of Princeton.

*Rights and Liabilities of the City.*

Sec. 40. The said city shall succeed to all the rights and liabilities of the said town of Princeton; it shall be liable for all the debts and obligations of the said town the same as if the said bonds or other evidence of indebtedness were issued in the corporate name of the said city.

*Power to Make and Maintain Sidewalks, Streets, Etc.*

Sec. 41. The council shall have power to provide for the construction of sidewalks upon the streets of the city, and assess the expense of the construction of the same upon the property abutting



thereon and the owners thereof and collect the same in the same manner as other taxes and levies are collected, and shall have power to macadamize and pave the streets of the said city, or any of them and assess part of the expenses of such macadamizing and paving not to exceed one-third thereof upon the abutting property on each side thereof, and the owners thereof, and collect the same in the same manner as other taxes and levies are collected, and such assessments for sidewalks, macadamizing and paving shall be a lien upon such abutting property, the same as other taxes and levies within said city upon the property therein. *Provided*, that nothing herein shall be construed to prevent the council from arranging for the construction of any such improvement, by agreement with the abutting property owners, if the council shall so desire and deem it advisable to do so.

*The Duty of the Council to Appoint Officers to Hold Election Hereunder.*

Sec. 42. The council in the city of Princeton shall provide places for voting in all municipal elections of the city and appoint commissioners residing therein to hold and conduct the elections hereinbefore provided to be held, and shall pass all proper ordinances to give this act full force and effect.

*Annulment of Old Charter, Etc.*

Sec. 43. The charter of the town of Princeton is hereby annulled and the said city of Princeton shall succeed to all the rights, powers and responsibilities of the town of Princeton, as they exist the day preceding the day on which this act takes effect, and shall enjoy such rights, exercise such powers and discharge such responsibilities, in the same manner as the same should have been enjoyed, exercised or discharged if this act had not passed.

*Repeal of Inconsistent Ordinances and Acts.*

Sec. 44. All ordinances of the town of Princeton as they exist at the time of the passage of this act, which are inconsistent therewith are hereby abrogated, and all acts and parts of acts inconsistent with any of the provisions of this act, are hereby repealed.

(House Bill No. 249.)

## CHAPTER 9.

AN ACT to create the municipal corporation of "The City of Ronceverte," in the county of Greenbrier, defining the powers thereof, and describing the limits of said city, and to grant a charter thereto.

(Passed February 24, 1909. In effect from passage. Approved by the Governor March 1, 1909.)

Sec.	Sec.
1. Corporate name.	26. Judgments rendered by appeal court.
2. Corporate limits and boundaries.	27. Method of appeal from mayor's judgment.
3. Territorial divisions; wards.	28. City clerk; powers and duties.
4. Municipal officers; eligibility for office.	29. Taxes; method of collecting; payment of same to treasurer; salary of city clerk.
5. Formation of common council.	30. } Bond required of clerk; who payable to.
6. Elections; method of conducting.	31. } Solicitor; duties of.
7. First election; annual elections thereafter.	32. } Chief of police; powers and duties.
8. Oath of office of elective officers.	33. } Arrests for violation of ordinances.
9. Duties of appointive officers.	34. } Treasurer; his duties; bond required.
10. Bond for faithful performance of duties.	35. } City commissioner; powers; compensation.
11. Removal from office; cause therefor.	36. } Liens on real estate for taxes.
12. Regular and special meetings of council.	37. } Licenses; for what granted; tax on same; method of application for; expiration of.
13. Keeping of minutes of meetings.	38. } Council's power of condemnation.
14. Reading of minutes.	39. } Sidewalks; construction of.
15. Expenditure of city funds.	40. } Street paving; assessment for.
16. Powers of council defined.	41. } Sewers; assessment for.
17. Franchises; how granted; time limit.	42. } Authority of council to confiscate private sewers.
18. Ordinances; authority to make, pass and adopt.	43. } Assessment of property and laying levy.
19. Mayor; authority, powers and duties; salary.	44. } Annual financial statement.
20. Issuance of summons.	45. } Bonds; power to issue.
21. Executions for fines and costs.	46. } Succession of rights, powers and titles.
22. Jail and jailor; expense of keeping prisoners.	47. } Inconsistent acts repealed.
23. Mayor's docket.	
24. Appeal from judgment.	
25. Cases on trial docket.	

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That the inhabitants of that portion of the county of Greenbrier, in the state of West Virginia, within the boundary described in the next succeeding section of this act, be and they are hereby made and created a municipal corporation by the name of "The City of Ronceverte," by which name they shall have perpetual succession and a common seal, and by which name they may sue and be sued, plead and be impleaded, contract and be contracted with, and purchase, or otherwise acquire and hold real estate and personal property needed in the discharge of the functions of government conferred by law and the provisions of this act.

Sec. 2. The corporate boundaries of the said city shall be as follows, that is to say:

Beginning at a poplar tree on the north bank of the Greenbrier river; thence north 44 degrees, 57 minutes, west 1749.6 feet to a set stone near the top of the hill; thence alongside and near the top of said hill, west 775.3 feet to a set stone; thence south 63 degrees, .04 minutes west, crossing top of a hill, at 547 feet, and centre of L. & R. R. track at 1224 feet and in all 2646 feet to a set stone near stone culvert on the road from Lewisburg to Ronceverte; thence north 83.33 west 1146.8 feet to a set stone near D. H. Foglesong's house; thence south 66 degrees, 48 minutes west 3047.4 feet to a set stone on top of a hill; thence south 61 degrees, 56 minutes west 1055.6 feet to a stone, in a hollow; thence south 23 degrees, 47 minutes west 1260.5 feet to a set stone, 3 feet from G. W. Perry's line; thence south 45 degrees, 13 minutes east 2179.2 feet to a hickory tree on north bank of Greenbrier river, and thence upon said river with the top of the north bank of the main stream thereof, and including the big islands, to the poplar tree the point of beginning, in all, 10,000 feet, more or less.

Sec. 3. The territory of said city is hereby divided into four wards, as follows:

*First ward.* All the territory within said city lying east of a line commencing at a point at the corporation line, in the centre of Frankford road, to Lewisburg avenue, and with said centre line of said Lewisburg avenue to Cherry street, and with said centre line of said Cherry street, and the extension thereof, to the north bank of Greenbrier river, shall constitute the first ward.

*Second ward.* All the territory lying between the west line of the first ward and the centre line of Spruce street, and extensions thereof, from the corporation line on the north to the north bank of Greenbrier river on the south, shall constitute the second ward.

*Third ward.* All the territory lying between the west line of the second ward and the centre line of Elm street and extensions thereof, from the corporation line on the north to the north bank of the Greenbrier river on the south, shall constitute the third ward.

*Fourth ward.* All the territory lying west of the west line of the third ward, shall constitute the fourth ward.

The common council may reduce or increase the number of

wards, and change the boundaries thereof, always having due regard to population.

The common council shall designate and provide a voting place in each ward.

#### *Officers.*

Sec. 4. The officers of said city shall be a mayor, clerk, who shall be *ex-officio* collector, a solicitor, a chief of police, a treasurer, one councilman from each ward, and a councilman-at-large and a city commissioner. The mayor and one councilman-at-large shall be elected by the qualified voters of said city, and the qualified voters of each ward shall elect one councilman from said ward.

The clerk, the solicitor, the chief of police, the treasurer and the city commissioner shall be appointed by the city council. No person shall be eligible to any elective office unless he is a qualified voter of said city, nor unless he has resided therein for at least six months before his election, and in the case of a councilman from one of the wards unless he is a *bona fide* resident of the ward from which he is elected and a freeholder of said city, and the removal of a councilman from the ward in which he was elected, or his ceasing to be a freeholder in said city shall vacate his office, and no person shall be eligible to any city office unless he is a taxpayer and a qualified voter thereof.

Sec. 5. The municipal authorities of said city shall consist of the mayor, and five councilmen, who together shall form a common council, and all the corporate powers of said city shall be exercised by said council, or under its authority, except where otherwise provided.

#### *Elections.*

Sec. 6. Elections shall be conducted under the general law. The first election held hereunder shall be on the first Thursday in June, one thousand nine hundred and nine, and annually, thereafter as hereinafter provided. Every person who has been a *bona fide* resident of the city for three months next preceding any election, and otherwise a qualified voter under the constitution and laws of this state, shall be entitled to vote at such election in the ward in which he resides.

The elections shall be held, conducted and the results thereof

be ascertained, returned and determined under such rules and regulations as may be prescribed by the council which shall not be inconsistent with the general laws of the state governing municipal elections, and shall conform as nearly as practicable to such laws. Contested elections shall be heard and decided by council, and the proceedings therein shall conform as nearly as may be to similar proceedings in the case of the county and district officers. The council shall be judge of the election, returns and qualification of its own members. In case two or more persons receive an equal number of votes for the same office, if such number be the highest cast for such office, the city council shall decide by vote which of them shall be returned elected, and shall make their return accordingly.

Sec. 7. At the first election provided for in section six, there shall be elected a mayor, one councilman-at-large and one councilman from each ward. The term of office of the mayor, of the councilman-at-large and the councilman from the third ward and the councilman from the fourth ward, shall be for two years after the first Monday in July, one thousand nine hundred and nine, and until their successors are elected and qualified. The term of office of the councilman from the first ward and the councilman from the second ward, elected at the first election, shall be for one year after the first Monday in July, one thousand nine hundred and nine, and until their successors are elected and qualified. An election shall be held in said first and second wards on the first Thursday in June, one thousand nine hundred and ten, and the terms of office of the councilmen elected from said wards at that election and all subsequent elections shall be for two years after the first Monday in July, succeeding their election and until their successors are elected and qualified. Annual elections shall thereafter be held in said city to elect the mayor and councilmen as their terms expire hereunder. The annual election to be held on the first Thursday in each June, and the term of office to begin on the first Monday in July following. All of the other officers provided for in this act shall be appointed by the common council and shall hold their offices during the pleasure of the council. One person may be appointed to, and discharge the duties of more than one of said offices. The same person shall not be appointed clerk for consecutive terms, nor shall any incumbent of said office be eligible for a second appointment unless he shall have fully settled

up the business of his former term or terms.

Sec. 8. Every person elected or appointed to any office in said city, shall, within twenty days after his election, or appointment, and before entering upon the discharge of the duties thereof, take and subscribe the oath of office prescribed by law for officers generally, which may be done before the mayor or clerk of said city or before any person authorized by law to administer oaths, and the same, together with the certificate of the officer administering the oath shall be filed with the clerk of said city and preserved by him. And if a bond be required by said officer he shall likewise give such bond and with such surety and in such penalty as the council may fix, and to be approved by the council before he shall assume the duties of the office to which he is appointed or elected.

Sec. 9. The council shall prescribe the powers and define the duties of all officers by it appointed, except so far as the same are by this act defined; shall fix their compensation, and may require and take from them respectively, bonds payable to the city in its corporate name, with such securities and in such penalties as may be deemed proper, conditioned for the faithful performance of their duties.

Sec. 10. The council shall require and take from all officers elected or appointed as aforesaid, whose duty it shall be to receive funds, assets or property belonging to the city, or having charge of the same, such bonds, obligations or other writings as may be deemed necessary and proper to secure the faithful performance of their several duties. All bonds, obligations or other writings taken in pursuance of any of the provisions of this act shall be made payable to "The City of Ronceverte" with such sureties and in such penalties as may be deemed proper, conditioned for the faithful performance of their duties and for the accounting for and paying over as required by law, all moneys coming into their hands by virtue of their offices, and the respective persons and their heirs, executors and assigns bound thereby, shall be subject to the same proceedings on said bonds, obligations and other writings, for enforcing the conditions of the terms thereof, by motion or otherwise, before any court of competent jurisdiction, held in and for the county of Greenbrier, that collectors of county levies and other sureties are, or shall be subject to, on their bonds for enforcing the payment of the county levies.

Sec. 11. The council shall have the authority to remove from office any elective officer of the city for misconduct, drunkenness or neglect of duty, by an affirmative vote of three-fourths of the members of the council, but only after reasonable notice to such officer, and a hearing of the charges preferred; and any vacancy in office, however occasioned, may be filled by the council for the unexpired term.

Sec. 12. The council shall fix the place and time for holding its regular meetings; may provide for special and adjourned meetings; shall have power to compel the attendance of its members; and may prescribe rules and regulations not inconsistent herewith, for the transaction of business and for its own guidance and government. The council shall be presided over at its meetings by the mayor, or in his absence by the clerk, or in the absence of both the mayor and clerk, then one of the councilmen selected by a majority of the council present, who may vote on any question as member of the council. The mayor shall have a vote only in case of a tie and in no case shall the presiding officer have but one vote. A majority of the council elected shall be necessary to constitute a quorum for the transaction of business. No member of the council shall vote upon, or take part in the consideration of any proposition in which he is, or may be interested otherwise than as a resident of said city.

Sec. 13. The council shall cause to be kept by the clerk in a well-bound book to be called the "minute book," an accurate record of all its proceedings, ordinances, acts, orders and resolutions, and in another to be called the "ordinance book," accurate copies of all the ordinances adopted by the council, both of which shall be fully indexed and open to the inspection of any one required to pay taxes to the city or who may be otherwise interested. All oaths and bonds of officers of the city and all papers of the council shall be endorsed, filed and securely kept by the clerk, except the bond of the clerk which shall be filed with the mayor. All printed copies of such ordinances purporting to be published, under authority of the council, and transcripts of such ordinances, acts, orders and resolutions, certified by the clerk under the seal of the city, shall be deemed *prima facie* correct, when sought to be used as evidence in any court or before any justice.

Sec. 14. At each meeting of the council, the proceedings of the last meeting shall be read and if erroneous, corrected, and

signed by the presiding officer for the time being. Upon the call of any member, the yeas and nays on any question shall be taken and recorded in the minute book.

Sec. 15. No ordinance or by-law, and no resolution or measure for the expenditure of money other than to defray the current and incidental expenses of the city, shall be deemed passed or adopted unless it shall have been fully read at two consecutive meetings of the council, and shall have received a majority of the votes of the members present, when it shall stand and be declared adopted, and not otherwise.

Sec. 16. The council of said town shall have power to lay off, vacate, close, open, alter, grade and keep in repair the roads, streets, alleys, pavements, sidewalks, crosswalks, drains and gutters therein for the use of the citizens or of the public, and to improve and light the same, and to keep the same free from obstructions of every kind; to regulate the width of pavements and sidewalks on the streets and alleys, and order the pavements, sidewalks, footways, drains and gutters to be kept in good order, free and clean, by the owners or occupants of the real property next adjacent thereto; to establish and regulate markets, prescribe the time for holding the same, provide suitable and convenient buildings therefor, and prevent injury or annoyance to the public or to individuals from anything dangerous, offensive or unwholesome; to prohibit or regulate slaughter houses and soap factories within the town limits, or the exercise of any unhealthful or offensive business, trade or employment; to abate all nuisances within the town limits or to require and compel the abatement or removal thereof by or at the expense of the owner or occupant of the ground on which they are placed or found; to cause to be filled up, raised or drained by or at the expense of the owner of any town lot or tract of land covered or subject to be covered by stagnant water; to prevent horses, hogs, cattle, sheep or other animals and fowls of all kinds from going or being at large in such town, and as one means of prevention, to provide for impounding and confining such animals and fowls and upon failure to reclaim, for the sale thereof; to preserve order in and about the premises where and when divine worship is held; to regulate the keeping of gunpowder and other inflammable or dangerous substances; to provide and regulate the building of houses or other structures, and for the making and main-



taining of division fences by the owners of adjoining premises, and the proper drainage of town lots and other parcels of land by or at the expense of the owners or occupants thereof; to provide against damages or danger by fire; to punish for carrying deadly weapons, and assaults and batteries; to prohibit loitering upon the streets; to prohibit houses of ill-fame, and to prevent lewd and lascivious conduct and the sale or exhibition of indecent pictures or other representations; the desecration of the Sabbath day and profane swearing; the illegal sale of intoxicating liquors, drinks, mixtures and preparations, beer, ale, wine or drinks of like nature; to protect the persons of those residing or being within said city; to build or purchase or lease, and to use a suitable place within or near said city for the safe keeping or punishment of persons charged with or convicted of the violation of ordinances; to provide for the employment of persons convicted of the violations of ordinances, or who may be committed in default of fines, penalties or costs and who are otherwise unable to discharge the same by putting them to work for the benefit of the city, and to use such means to prevent their escape, while at work, as they may deem expedient; to erect, or authorize or prohibit the erection of gas works, electric light works or water works within the city limits, to prevent injury to such works or the pollution of any gas or water used or intended to be used by the public or individuals, and to do all things necessary to adequately supply said city and the inhabitants thereof with pure, healthful, and wholesome water; to use, generate, distribute, sell and control electricity and gas for heat, light, and power, and to furnish light for the streets, houses, buildings, stores and other places in and about said city; to provide a sewerage system for said city; to provide for and regulate the weighing and measuring of hay, coal, lumber and other articles sold or kept or offered for sale within said city; to regulate the running and speed of automobiles, engines and cars within said city; to organize one or more fire companies and provide necessary apparatus, tools, implements, engines, or any of them, for their use, and in their discretion to organize a paid department; to make regulations with respect to the erection and location of all telephone, electric light or other poles within said city, and the extension of any wires, lines and poles by any individuals or corporation; to grant and regulate all franchises in, upon, over and under the streets, alleys, and public ways of

said city, under such restrictions as shall be provided by ordinance, but no exclusive franchise shall be granted by said council to any individual or corporation, nor shall any franchise be granted for a longer period than fifty years; to create by ordinance such committee or boards, and delegate such authority thereto, as may be deemed necessary or advisable; to provide for the annual assessment of taxable property therein; including dogs kept in said city, and to provide a revenue for the city for municipal purposes, and to appropriate such revenues to its expenses; and generally, to take such measures as may be deemed necessary or advisable to protect the property, public and private, within the city, and to preserve and promote the health, safety, comfort and well-being of the inhabitants thereof.

The council shall also have power and authority to control and regulate the construction and repairs of all houses and other buildings within the city; to provide for the granting of building permits, to cause the removal of unsafe walls of buildings, and may, upon the petition of the person or persons owning the greater amount of frontage of the lots abutting on any street, between any two cross streets or any square in said city, prohibit the erection on such streets or in such square, of any building, or of any addition to any building, more than ten feet high, unless the outer walls thereof be made of brick and mortar or other fire-proof material; and to provide for the removal of any building or addition which shall have been erected contrary to such prohibition, at the expense of the owner thereof, and to prevent all unnecessary noises and regulate the blowing of steam whistles in said city.

#### *Franchises.*

Sec. 17. Franchises may be granted by the city council to persons or corporations allowing such occupancy of portions of the streets and alleys, as may be necessary for works of public utility and service, but no such franchise shall hereafter be granted except under the following restrictions and conditions: No ordinance shall be passed granting any franchise for the use of any of the streets or alleys of the city for any of the purposes above named, until the same shall have been filed with the clerk at least thirty days prior to the time when it is to be acted upon by council, and notice of such application, stating the object of such franchise

and when the same shall be considered by the council, shall have been given thirty days notice, in some newspaper of general circulation published in the city.

Nor shall such franchise be granted within thirty days after the application has been filed, nor until an opportunity has been given any citizen or corporation, interested in the granting or refusing of said franchise to be heard.

Nor shall any franchise be hereafter granted by council for a longer period than fifty years; *provided*, that council shall have the power to renew any such franchise for the term of fifty years when the same shall have expired. No franchise hereafter granted for a longer period than fifty years shall be of any force or validity. No grant of any such franchise shall be made without at the time of making it, providing that the grantee, its successors or assigns, shall indemnify the city against all damages caused by the construction of such works.

If any corporation, or person to whom a franchise has been heretofore or may hereafter be granted, or their successors or assigns, shall fail to comply with the conditions of the ordinance granting such franchise within one year from the time said conditions are directed to be performed, said franchise shall be and the same become null and void. No contract or franchise heretofore existing shall extend to added territory, without the granting of a new franchise and new contract covering the added territory.

Sec. 18. To carry into effect these enumerated powers and all others by this act or general law conferred, or which may hereafter be conferred upon the said city or its council or any of its officers, the said council shall have and possess full authority to make, pass and adopt all needful ordinances, by-laws, orders and resolutions not repugnant to the constitution and laws of the United States or of this state; and to enforce any or all of such ordinances, by-laws, orders or resolutions by prescribing for a violation thereof, fines and penalties and imprisonment, in either the county jail of Greenbrier county or the city prison, if there be one, but no fine shall exceed one hundred dollars, and no term of imprisonment shall exceed ninety days. Such fines and penalties shall be imposed and recovered, and such imprisonment inflicted and enforced, by and under the judgment of the mayor of said city, or in case of absence or inability to act, of the clerk of said city, or in

case of absence or inability to act of both of said officers, of one of the councilmen, appointed for that purpose by the council.

Sec. 19. The mayor shall be the chief executive officer of the city and shall see that the orders, by-laws, ordinances and resolutions of the council thereof are faithfully executed; he shall be *ex officio* a justice and conservator of the peace within the city and shall within the same, have, possess and may exercise, all the powers and perform all the duties whether in civil or criminal proceedings, vested by law in a justice of the peace. Any summons, warrant or other process, issued by him may be executed at any place within the county; he shall have power during the recess of the regular meetings of council to appoint special police officers when he shall deem it necessary, and it shall be his duty to see that the peace and good order of the city are preserved, and that persons and property therein are protected: and to this end he may arrest and detain, or cause the arrest and detention of all riotous and disorderly persons before taking other proceedings in the case; he shall from time to time recommend to the council such measures as he may deem needful for the welfare of the city; he shall not receive any money due or belonging to the state or corporation or to individuals, nor have the civil jurisdiction of a justice, unless and until he shall have given the bond and security required of a justice of the peace by chapter fifty of the code of West Virginia; and all the provisions of said chapter relating to moneys received by justices shall apply to moneys received by him in like cases.

The mayor shall receive a salary of not less than one hundred nor more than three hundred dollars per annum; such salary shall be in lieu of the fees which would otherwise accrue to him in the proceedings for the enforcement of ordinances, but all such fees shall be collected when practicable, and accounted for to the city, and he may tax such costs against any person or corporation found guilty of the violation of any ordinance of the city, as are provided to be taxed and recovered by justices of said county in criminal cases.

Sec. 20. The process in proceedings to enforce any ordinance prescribing a fine or imprisonment, or a fine and imprisonment, for the violation thereof shall be a summons in the name of the city of Ronceverte as plaintiff, directed to the chief of police, to one of the regular police officers of the city, or to any constable

of any district within the said city, requiring him to summons the person accused of such violation and who shall thereafter be designated as defendant, to appear before the mayor at the time and place therein named, to make answer to such accusation and be dealt with according to law; such summons shall contain such a statement of the facts alleged as will inform such person of the general nature of the offense against the city with which he stands charged, and except in cases of arrest upon view, shall be issued only upon the complaint on oath, of some creditable person. But the mayor may for good cause appearing, by endorsement on the summons, order the person so accused to be forthwith apprehended and brought before him for a hearing of the charge. The clerk of said city as well as the mayor, shall have authority to receive any complaint in writing of the violation of any ordinance, and to sign and issue the proper summons based upon such complaint. The mayor shall possess, and may exercise, the power and authority belonging to a justice under sections two hundred and twenty-four and two hundred and twenty-five of chapter fifty of the code of West Virginia, in summoning and enforcing the attendance and examination of witnesses, in punishing for contempt, in granting continuances, and in securing and enforcing the further attendance of the accused with a view to a trial or hearing. If any recognizance be taken for such further attendance, and is forfeited, the mayor may record the default, and an action be maintained in the name of the city, before the mayor, or any justice having jurisdiction, against the accused and his sureties, if any, to recover the penalty thereof.

Sec. 21. The mayor shall have power to issue an execution for any fine and costs assessed or imposed by him, for the violation of any ordinances, or he may at the time of rendering judgment therefor, or at any time thereafter and before satisfaction of such judgment, by his order in writing, require the immediate payment thereof; and in default of such payment he may cause the person so in default to be apprehended and brought before him, and commit him to the jail of Greenbrier county or in his discretion to the prison of said city, if one shall have been provided, and require him to labor on the streets until the fine and costs are fully paid; but such imprisonment shall not exceed ninety days.

Sec. 22. The jail of Greenbrier county may be used as a lockup for said city. The jailor of said county shall take and receive

into his custody any person authorized to be confined therein by the ordinance of said city, or sentenced to imprisonment therein, or committed thereto, for non-payment of a fine or costs or for failure to enter into a recognizance by the judgment or order of the mayor, in proceedings for violation of an ordinance; and the expense of maintaining such persons while so in confinement shall, if such person be found guilty of such violation, be charged to such person as part of the costs, but whether collected from such person or not, such expense shall be paid to said jailor by the city.

#### *Mayor's Docket.*

Sec. 23. A book, well bound and indexed, to be denominated the "docket," shall be kept in the office of the mayor, in which shall be noted each case brought or tried by him, together with the proceedings therein, including a statement of complaint, the summons, the return, the fact of appearance or non-appearance, the defense, the hearing, the judgment, the costs, and in case the judgment be one of conviction, the action taken to enforce the same; the record of such case shall be signed by the mayor or other person acting in his stead; and the original papers thereof, if no appeal be taken, shall be kept together and preserved in his office.

#### *Appeal.*

Sec. 24. In any case for the violation of an ordinance of the said city in which there is a judgment by the mayor, or imprisonment, or for a fine of more than ten dollars, an appeal shall lie at the instance of the person against whom such judgment is rendered, to the circuit court of Greenbrier county. Such appeal shall not be granted by the mayor unless, within ten days from the date of the judgment such person shall enter into a recognizance with security deemed sufficient, in a penalty double the amount of fine and costs, with condition that the person appealing, will appear before the said court on the first day of the next term thereof, to answer for the offense against the city with which he stands charged, and not thence depart without leave of court, and will perform and satisfy any judgment which may be rendered against him by the circuit court on appeal. The provisions of chapter one hundred and sixty-two of the code of West Virginia, relating to

recognizance in criminal cases, shall be applicable to the recognizance contemplated by this section, except where therein otherwise provided; but any money recovered thereon or by virtue thereof shall inure to the said city.

Sec. 25. If such appeal be taken the mayor shall forthwith deliver to the clerk of said court the complaint in writing, if any; the summons, a transcript of the record including the judgment, the recognizance, and any other papers belonging to the case; and such clerk shall receive and file the same, and place the case upon the trial docket of the next succeeding term of said court, and said court shall proceed to try the same in its order.

Sec. 26. If the appellant be found guilty of a violation of the ordinance in question, whether upon the verdict of a jury or otherwise, the court shall ascertain by its judgment the fine or imprisonment, or the fine and imprisonment to be paid or suffered by such defendant, having regard to the punishment prescribed by such ordinance, and shall include in any such judgment, the costs incurred by said city, as well in the proceedings before the mayor as those in court, including a fee to the attorney for the city of five dollars, and the fees, if any, of the jailor or the keeper of the city prison; and the proceedings to enforce the collection of any such fine and costs, as may be provided in sections ten, eleven and twelve, of chapter thirty-six of the code of West Virginia, except that the writ mentioned in the tenth section, may be issued by the clerk upon the order of the mayor of the city, and the notice contemplated by the eleventh section shall be given to such officer. If the judgment be for the defendant, he shall recover his costs against the city, but no docket fee shall be charged against the city.

Sec. 27. From all judgments by the mayor, in cases other than for violation of ordinances, appeals shall be allowed as in similar cases before justices.

*Clerk.*

Sec. 28. It shall be the duty of the city clerk to keep a journal of the proceedings of the council, and have charge of and preserve the records, papers, contracts and other documents belonging to the city; it shall be his duty to attend the sessions of the police court, and keep an accurate record of its proceedings, and all judg-

ments shall be entered by him, within twenty-four hours after the same is rendered; he shall, in cases of sickness or disability of the mayor to act, or in case of his absence from the city, or during any vacancy in the office of the mayor, perform the duties of mayor, and shall be vested with all the powers necessary for the performance of such duties: he shall also perform such other duties pertaining to the fiscal affairs of the city, or otherwise, as may be required of him by this act or by the council.

As soon as the rate of levy shall have been fixed by council according to law, the clerk shall furnish the officer whose duty it is to make out the land and personal property books, a certified copy of the order of the council fixing the rate of tax, and such officer shall thereupon extend the tax against the property situated in the city, in the land and personal property books, in separate columns in said book.

Sec. 29. The clerk shall, when the extended copies of the assessor's books are completed and returned to the clerk of the county court, have access to the same, for the purpose of making out the tax tickets of the taxes therein extended, and it shall be the duty of the clerk to make out all tax tickets, and when the same shall have been examined, compared, and approved by the financial committee of the council and found to be correct, they shall be forthwith turned over to the clerk, whose receipt shall be returned to the council and entered upon its record and the clerk shall be charged therewith.

The clerk shall give notice that said tax tickets are in his hands for collection, stating the penalty for non-payment thereof, and the time and place where the same may be paid, which notice shall be published for fifteen days in one or more newspapers published in said city.

The clerk shall immediately proceed to collect from the persons by distraint, or otherwise, the entire amount of the taxes with which they are severally charged therein, and remaining unpaid on the first day of January next, succeeding said levy, with interest at the rate of one per centum per month from the said first day of January until they are fully paid.

All license taxes shall be payable on the first day of July of each year, or at such time as such licenses may be issued.

Sec. 30. The said clerk shall receive all taxes, assessments, fines and costs, water rents, and other money due the city authorized



by this act, or by any ordinance of the said city, to be paid to the city; and shall receipt for the same; he shall keep an accurate account of all money paid to him for the use of said city, showing under separate accounts the amounts received for account of taxes, sewer purposes, street pavements, licenses, water rents and other bills due the city, fines and costs and of other matters pertaining to his office, which books shall at all times be open to the inspection of the council, or to any committee appointed by it for such purposes; he shall pay over promptly, all money which he may receive, within five days after the receipt thereof, into the hands of the treasurer of the said city, showing an itemized statement of the several funds included in said payment, taking the treasurer's receipt therefor; he shall keep his office at the office of the mayor, unless otherwise ordered by the council and shall keep his office open for the transaction of business during the usual business hours, and as may be directed by council; he shall on or before the first day of January and July of each year and oftener, if directed by council, present to the council a full, complete and detailed statement of all money with which he is chargeable, or that has been received by him from all sources up to that time, together with a statement of all money paid to the treasurer and proper receipt therefor, and he shall at such times return a list of all taxes, levies, assessments and other claims in his hands for collection which he shall not have been able to collect by reason of insolvency, removal, or other cause, to which list he shall append an affidavit that he has used due diligence to collect the several items therein mentioned, but has been unable to do so, and if the council should be satisfied as to the correctness of said list, it shall allow him a credit for said claims, but may thereafter take such lawful measure to collect the same as shall be by it prescribed. The said clerk shall receive all taxes on licenses, and receipt to the party paying the same by endorsement upon the permit granted by order of the council and shall charge himself with the amount received from the same, and report to the council, at the next regular meeting thereafter, the amount so received and pay the same over to the treasurer, taking his receipt for the same; he shall upon the expiration of his term of office, or upon the order of council, turn over to his successor all money, books of account and other property of said city in his possession; he shall receive such salary as may be fixed by council, which shall

not be less than at the rate of six hundred dollars, nor more than one thousand dollars per annum.

Sec. 31. The clerk of said city before entering upon the discharge of his duties, shall execute a bond conditioned for the faithful performance of the duties of his office, and for the accounting for and paying over, as required by law, all money which may come into his hands by virtue of his office, with sureties satisfactory to the council, payable to the city of Ronceverte, in a penalty of not less than two thousand nor more than ten thousand dollars, as the council may prescribe; he shall be custodian of all bonds, notes, certificates and other evidences of indebtedness to the city, together with all valuable papers which may be placed in his possession by the council, except that the bond of the clerk shall be deposited with the mayor; he shall be chargeable with, and it shall be his duty to collect the city taxes, levies and assessments, under such regulations as may be prescribed by law and the ordinances of the city, and in case the same are not paid within one year, after they are placed in his hands for collection, he may distrain and sell therefor in like manner, and have the same power and authority possessed by the officer charged with the collection of state taxes.

If the clerk shall fail to collect, account for, and pay over to the treasurer of said city, any or all of the money with which he may be chargeable, belonging to the said city, according to the conditions of his bond and orders of council, it shall be lawful for the council to recover the same by action or by motion, upon ten days' notice in the corporate name of the city, in the circuit court of Greenbrier county, against him and his sureties, or any or either of them, or his or their executors or administrators.

#### *Solicitor.*

Sec. 32. It shall be the duty of the solicitor to prepare when directed by council, all ordinances for said city, to represent the said city in all matters and proceedings in any court, in which the said city is interested, and counsel the said council when requested; he shall receive a compensation for his services, to be fixed by the council.

#### *Chief of Police.*

Sec. 33. It shall be the duty of the chief of police to preserve

order and quiet in said city, and to see that all subordinate police officers faithfully perform their official duties, and he may for good cause appearing to him, for neglect of duty or insubordination, suspend any such officer from duty, and report his action and his reasons therefor, to the next regular meeting of council for action thereon, he shall make a list of all dogs within said city liable to tax, collect the license tax thereon and pay the same to the clerk, as may be provided by ordinance of said city; he shall be present in the police court whenever the same shall be in session, and see that all its orders and requirements are properly executed; he shall with the consent of the council entered of record, but not otherwise, appoint one or more policemen as the council may determine; he shall before entering upon the discharge of his duties, execute a bond conditional for the faithful performance by him, of the duties of his office, and for the accounting for and paying over, as required by law, all money which may come into his hands by virtue of his office, with sureties satisfactory to the council, in a penalty of not less than one thousand dollars, nor more than three thousand dollars, as the council may prescribe; he shall receive such salary as may be fixed by council, which shall not be less than three hundred dollars, nor more than six hundred dollars per annum,

Sec. 34. In case a violation of any ordinance of said city is committed in the presence, or within view of the chief of police or other police officer, the offender may be forthwith apprehended and taken before the mayor, and a complaint under oath, stating such violation there lodged and filed; and thereupon such offender may be tried and dealt with according to law, without summons. The chief of police shall execute within the county of Greenbrier when directed to him, any proper process issued by the mayor in proceedings for the enforcement of ordinances; and shall collect by levy of execution or otherwise, and duly account for, all fines assessed and costs imposed in such proceedings. He shall also have all the rights and powers, within said city in regard to the arrest of persons, the collection of claims and execution and return of process, that are or may be lawfully exercised by a constable of a district within the same, and shall be entitled to the compensation therefor: and he and his sureties shall be liable to all fines, penalties and forfeitures, for which a constable is liable, for any dereliction of duty in office, to be recovered in the same

manner and in the same courts, that such fines, penalties and forfeitures are recovered against constables. He shall pay over all fines or sums collected to the clerk forthwith.

*Treasurer.*

Sec. 35. The treasurer may be a citizen, a bank or trust company of said city, and shall be selected by council and shall hold office during the pleasure of the council. All money due the city shall be paid to the clerk, and be by the clerk deposited with the treasurer. The money deposited with the treasurer shall be disbursed only upon orders drawn against the same, signed by the mayor and countersigned by the clerk. The treasurer shall receipt to the clerk for all money paid by him, and shall keep regular books of account, showing the amount of the several funds paid or deposited with the treasurer by said clerk, and shall make report to the council once a month, or at such other times as the council may direct, showing the receipts and disbursements of the funds of the city, and the treasurer shall produce his books and accounts to council or any committee of the same for inspection, upon the order of the council.

The treasurer shall give bond with security to be approved by the council, in a sum of not less than five thousand dollars, with condition that the said treasurer shall account for and pay over all money received for the account of said city, as may be directed by the council. The said treasurer shall receive such compensation as the council may fix, which shall not be more than at the rate of two hundred dollars per annum. Any bank or trust company of said city is hereby authorized to act as treasurer of said city, and the same shall be liable for all money deposited therein.

*City Commissioner.*

Sec. 36 The city commissioner shall receive such compensation as may be fixed by council. He shall have general supervision of the streets, alleys, drains, and sewers of said city, and of the construction of new streets, alleys, sewers and drains, and of making changes in the ones existing. He shall also be the chief health officer of said city and shall report forthwith to the council, anything that in his judgment is detrimental to the health of the public, and especially, he shall report any contagious

or epidemic disease that may occur in said city. He shall see to the lighting of the streets, and that the same are properly lighted, pursuant to contract. He shall have supervision of the water works and of all the tangible property of the said city, and all appliances used by the fire department of said city, and shall see to it that the same is properly taken care of and kept in proper condition for use. It shall be his duty to investigate all applications for new streets and alleys, and all applications for the use of the public water for all purposes, and report the same to the council with his recommendation, in regard thereto.

It shall likewise be his duty to report to the council, every obstruction found in any of the streets or alleys in said city, and on such report the mayor shall summon the offender to show cause why the same should not be removed at the expense of the offender and why a fine should not be imposed upon such offender for violation of the ordinance of said city in regard thereto. It shall likewise be the duty of said city commissioner to supervise and protect all of the buildings and other property belonging to said city and to provide for the proper heating and cleaning and lighting of the city buildings and lockup, and such other duties as may be imposed upon him by the common council.

#### *Lien for Taxes.*

Sec. 37. There shall be a lien on real estate within said city for the city taxes assessed thereon, and for all fines and penalties assessed to, or imposed upon the owners thereof, by the authorities of said city from the time the same are so assessed or imposed, which shall have priority over all other liens, except the lien for taxes due the state, county and district; and which may be enforced by the council in the same manner provided by law for the enforcement of the lien for county taxes. If any real estate within said city be returned delinquent for the non-payment of the delinquent taxes thereon, a copy of such delinquent list may be certified by the council to the auditor and the same may be sold for the city taxes, interest and commissions thereon, in the same manner, at the same time and by the same officer as real estate is sold for the non-payment of state taxes.

#### *License.*

Sec. 38. The council shall have the authority to require a city

license as follows: For anything to be done, carried on or exhibited within said city, for which a state license is now, or may hereafter be required, for the keeping of hacks, carriages, carts, wagons, and other vehicles for hire within the city, and for the keeping of dogs within the city, and the council may provide for the killing of all dogs, the keeping of which is not so licensed. And upon all such licenses the council may impose a reasonable tax for the use of the city. This section shall not be construed to authorize the granting by the common council of said city, of a license to sell at retail, spirituous liquors, wine, porter, ale or beer, or any drink of like nature, without the consent of the county court of Greenbrier county.

Sec. 39. The council shall prescribe by ordinance, the manner in which licenses of all kinds shall be applied for and granted, and shall require the payment of the tax thereon to be made to the clerk of said city before delivery to the person applying therefor, and the provisions of sections thirty-nine, forty, and forty-one of chapter thirty-six of the acts of one thousand nine hundred and five, relating to licenses, shall govern the city in the granting of licenses similar in character to those therein mentioned, except where otherwise herein provided. Licenses for keeping dogs shall also expire on the thirtieth day of June next after they are granted, and all other licenses may be for such times as the council may determine.

#### *Powers of Council.*

Sec. 40. The council shall have the right to institute proceedings in the name of the city, for the condemnation of real estate for streets, alleys, sewers, drains, market grounds, landings, wharves, city prison, or other work or purpose of public utility; such proceedings shall conform to the provisions of chapter forty-two of the code of West Virginia, and the costs thereof shall be borne by the city, except that in contests involving a hearing in the circuit court, costs shall be recovered by the prevailing party.

#### *Sidewalks.*

Sec. 41. The common council shall have power to determine the material to be used in building all sidewalks, and shall determine

through the city commissioner's report where such sidewalks shall be erected, and the width and grade thereof, and shall fix upon the material with which the same shall be built, and may make an order requiring the owners of the lots, or parts of lots, facing or abutting on such sidewalk or footway, to pave the same with such material and on such grade and of such width as may have been determined at the expense of such owner, and under the supervision of the city commissioner, and if such owner of such abutting lot, or lots, fail or refuse to pave the same in the manner or within the time required by the council, the said common council may cause the same to be done, at the expense of the city, and to assess the amount of such expense upon such owner, and the clerk shall notify the owner of said lot the amount of such assessment and if the said assessment be not paid within thirty days from the date of said notice, he shall cause a memorandum showing the name of the owner of said lot, a description of the lot, and the amount of such assessment, to be filed in the office of the clerk of the county court of Greenbrier county, which shall be entered of record in the judgment lien docket in his office and the same shall constitute a lien on such property, which may be enforced by a suit in equity in the name of the city, in the circuit court of Greenbrier county as other liens against real estate are enforced, and upon the payment of said assessment, the clerk shall issue to the person entitled thereto, a release of said lien; *provided, however*, that reasonable notice shall first be given to said owners, that they are required to construct such sidewalks or footways, and in case the owner is a non-resident of the state, the notice aforesaid may be given by publication for four successive weeks, in a newspaper published in said city. The provisions of this section shall also be applicable to needed repairs to any of the pavements of the city, and to the substitution of new pavements for any which may have been heretofore, or which may be hereafter laid and completed, and which may be deemed insufficient.

#### *Street Paving.*

Sec. 42. The council shall have the authority to provide that any street or alley or any portion thereof, between the curbstones, shall be macadamized, or paved with bricks, cobblestones or other suitable material, upon the lowest and best terms obtainable,

and the whole cost of such macadamizing or paving, from curb to curb of such street or alley, shall be assessed to the owners of the land or lots, or fractional parts of lots, fronting or abutting on such street or alley, that is to say: the property owners on each side of said street or alley, to be assessed one-third each and the city one-third of the costs of said improvements, to each property owner a sum proportionate to the distance, or extent in feet by him owned and one-third of a sum so assessed shall be paid by each property owner to the city, within thirty days after the completion of the work, and the remainder in two equal installments in six and twelve months thereafter, with interest thereon, or at such other times as the council may prescribe. The expense of macadamizing or paving at the intersections of streets and alleys, shall be defrayed by the city. After the said improvements have been made, the council shall cause a notice to be published for one week in a newspaper of said city, showing the owners of the property and the number of feet fronting on said improvements, as well as the time and the place where the said council will proceed to fix said assessment as above provided, and giving notice to any person having any interest in said property to appear and show cause, if any they can, why such assessment should not be made; and the council may in making said assessments, consider the petition of any person or corporation relative to the inequality of said assessment, and may equalize and adjust the same. A copy of the list of such assessments showing name of owner, number of lot, or parcel of land, amount of assessment, attested by the mayor and clerk, shall be filed in the office of the clerk of the county court of Greenbrier county, and recorded in the judgment lien docket in said office within thirty days after the assessments are approved by the said council, otherwise the lien of said assessment shall be void as to any purchaser of said real estate, for value and without notice, who shall have purchased such real estate, and the clerk shall execute and deliver on behalf of said city a release of such lien, upon the payment in full of said assessment. The assessment so made to any owner of real estate, shall constitute a lien on such estate; and like proceedings may be had and taken to enforce such lien, or to recover from such owner the amount of such assessment, or of any installment thereof, as those provided for in the preceding section providing for the laying of pavements.



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*Sewers.*

Sec. 43. The council of said city of Ronceverte shall have the authority under the provisions of ordinances adopted by the council of said city, to cause all necessary sewers to be constructed in any or all of the streets, alleys and public grounds of said city, upon the lowest and best terms to be obtained by the direction of said council, and shall fix a uniform assessment against the owners of the real estate, lots or parcels of ground within said city, abutting or abounding on the streets, alleys or public grounds, in which sewers or so constructed, which assessment shall not exceed seventy-five cents for each front foot of land, lot or parcel of ground, fronting or abutting on the street, alley or public ground in which such sewer is constructed; and no other special tax shall be levied against the said real estate, lots or parcels of ground for the use of said sewer, the cost of constructing such sewers in the intersection of such streets or alleys to be paid by the city. The one-half of said assessment shall be paid within thirty days after said sewer is completed and ready for use, and the remaining one-half with interest at the rate of six per centum per annum, shall be paid within six months after said last named date, and the said council may by ordinance compel the owners of lots or parcels of ground, fronting or abutting on any street or alley in which such sewer is constructed, under the supervision of such officer as the council may designate, to connect any residence, store, or warehouse, factory, or other building occupied by persons as a place of residence or for labor, with such sewer within thirty days after its completion, and may inflict fines and penalties for any violation of such ordinance.

The intersections of all streets and alleys shall be provided with sewers at the expense of the city, but all connections to sewers in street or alley, to be made by property owner abutting on said street wherein sewer is constructed. The sums of money thus assessed for sewer connection shall be a lien on the lots, tracts or parcels of land upon which they are assessed, which lien may be enforced by a suit in equity in the circuit court of Greenbrier county, to subject the said real estate to the payment of the sum so assessed against it as herein provided, in the same manner that judgment liens are enforced. The council shall cause a notice

to be published for one week in some newspaper published in said city, showing the owners of the real estate and number of feet owned by each fronting on said improvement, as well as the time and place where the said council will proceed to fix said assessments as herein provided, and giving notice to any person having an interest in the property so assessed, to appear and show cause, if any he can, why such assessment should not be made; and the council may in making or reviewing said assessment consider the petition of any person, or corporation affected thereby, relative to the inequality of said assessment, and may equalize and adjust the same. A copy of the list of such assessments, showing the name of owner, number of lot, or parcel of land, and amount of assessment, attested by the mayor and clerk, shall be filed in the office of the clerk of the county court of Greenbrier county and recorded in the judgment lien docket in said office, within thirty days after the said assessments are approved by the said council, otherwise the lien of said assessment shall be void as to any purchaser of said real estate, for value and without notice, who shall have purchased such real estate, and the clerk shall execute and deliver on behalf of said city, a release of such lien, upon the payment in full of said assessment.

The funds derived by the said city from assessments for construction of sewers, as herein provided, shall be used by said city for sewer construction only, and the clerk and treasurer shall keep separate accounts of receipts and disbursements of said fund, and shall make separate report with respect to said fund from time to time as the council may direct, and the said clerk and treasurer shall be liable to said city, on their official bonds, for the payment of all money which may come into their hands, respectively, by virtue hereof, and shall pay over the same upon the proper order of the council.

Sec. 44, The sewers heretofore constructed, in any of the streets or alleys of said city at the expense of the property owners abutting thereon, and by the authority of said council, may be taken for public use by said city, and the same may be used subject to the provisions of the preceding section, but before any such sewer is so occupied by the city, compensation shall be made to the persons having paid for the same or entitled thereto. Such compensation shall be determined by the award of three arbitrators, one selected by the council, one selected by the person or persons hav-

ing paid for the construction of said sewer, or his assigns, and the two selected shall choose a third arbitrator, and the said arbitrators shall, after hearing all evidence as to what would be a just compensation for such sewer, make their award in writing, which award shall be final, and entered of record by the council. The arbitrators so selected and chosen, shall not be interested in the matters submitted to them other than as taxpayers of said city. And the owners of any real estate abutting on any such street or alley, in which any such private sewer has been constructed by authority of the council, and at their own expense, shall not be required to pay any assessment levied or assessed against the same for the construction of a sewer in a street or alley, in which such private sewer has been so constructed, until said private sewer is taken by said city and compensation made therefor as herein provided, and any private sewer so taken by said city shall be held, used and occupied as provided in the next preceding section, and the property abutting thereon subject to the assessments as therein provided.

Sec. 45. All assessments of property for purposes of taxation, the preparation for, and levying of all taxes and levies, general or special, shall be ascertained, advertised and levied, and in all respects conform to the provisions of chapter nine of the acts of one thousand nine hundred and eight, and any amendments which may be made thereto, any provision, section or clause in this act to the contrary notwithstanding. An annual capitation tax of one dollar may be levied upon each male inhabitant of said city, who has attained the age of twenty-one years.

#### *Financial Statement.*

Sec. 46. In the month of August in each year, the council shall cause to be published in two newspapers of opposite politics in the city, if there be such published therein, at a compensation not to exceed the rate as provided by law for like publications, for one issue, or if no such newspaper be published therein, to publish in pamphlet form not less than one hundred copies of a sworn statement of the financial condition of said corporation; said statement shall contain an itemized account of the receipts and expenditures of the city, showing the source from which all money was derived, the name of the person to whom an order was issued,

together with the amount of each order, and why such order was issued, arranging the same under distinct heads, and also a specific list of the debts of the city showing the purpose for which any debt was contracted, the time it became due, the rate of interest, up to what time the interest thereon has been paid, the amount of money in the treasury at the end of the preceding administration and debts contracted by it; such statement shall be prepared by the city every twelve months and shall then be printed according to the provisions of this section. Either method of making this report shall be sworn to by the clerk, by the mayor and members of finance committee of the council. One copy of such printed report shall be delivered to the judge of the circuit court, one to the clerk of the county court, and one to the clerk of the circuit court of Greenbrier county, and one shall be kept as a part of the records of the city, and the remainder shall be held for distribution as called for by the taxpayers of the city.

If council fail or refuse to perform the duties hereinbefore or hereinafter named, every member of such council and the clerk thereof, concurring in such failure or refusal, shall be guilty of misdemeanor, and upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars.

#### *Bonds, Additional Levy.*

Sec. 47. The municipal authorities of said city shall have power and authority to issue and make sale of the bonds of said city, as provided by law, and apply the proceeds thereof to the payment for any general improvement therein, or to any debt or obligation of the said city, as provided by law.

Sec. 48. The city of Ronceverte shall succeed to all the rights, powers and responsibilities, and be vested with the title to all property of the town of Ronceverte and the city of Ronceverte as heretofore existing, and all officers of said town acting as such, at the time this enactment takes effect, shall continue until the first Monday in July, one thousand nine hundred and nine, or until their successors, the officers herein mentioned, are elected or appointed and qualified, to exercise the powers, perform the duties, and receive the compensation heretofore conferred, prescribed and allowed by former charter, by general law or by the ordinances of said city; such ordinances in force at the time referred to shall

continue to have full operation and effect until amended, repealed or superceded by the council of said city.

Sec. 49. All acts and parts of acts coming within the purview of this act, and inconsistent herewith, are hereby repealed.

(House Bill No. 50.)

CHAPTER 10.

AN ACT to incorporate the city of Weston, in the county of Lewis, defining the powers thereof and describing the limits of said city, and to repeal all acts and parts of acts inconsistent with the provisions of this act

(Passed February 25, 1909. In effect from passage. Became a law without the approval of the Governor.)

Sec.

1. Body politic and corporate; corporate name and powers.
2. Corporate limits and boundaries.
3. Wards.
4. Municipal authorities.
5. Corporate powers.
6. Eligibility of officers.
7. Term of office.
8. Elections.
9. Election of councilmen; term of office.
10. Election precincts.
11. Who are entitled to vote.
12. Mode of voting; returns.
13. Tie vote; how decided.
14. Contested elections; how determined.
15. Vacancy in office.
16. Powers of council as to additional officers; power of tax collector, chief of police.
17. Bond and oath of office.
18. Failure to qualify; vacancy.
19. When elective officers to enter upon duties.
20. Mayor; powers and duties of; appeals; compensation.
21. City clerk, duties of
22. Quorum.
23. Council journal.
24. Reading of journal.
25. Mayor to have vote and decide all ties.
26. Meetings of council.
27. How moneys paid out.

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28. Ward regulations.
29. When money can be appropriated and debts contracted.
30. Powers of council.
31. Authority of council to pass and enforce ordinances; additional powers; license for sale of spirituous liquors.
32. Licenses to owners of horses, hacks, etc.
33. Franchises; granting of
- 33a. Increase of corporate limits.
34. Duty of council if proposed change of corporate limits is adopted.
35. Mayor's docket.
36. Board of health.
- 36a. Estimate of expenditures; levy.
37. Duty of city clerk regarding assessments.
38. Lien upon real estate for city taxes assessed thereon.
39. Duty of city collector respecting the collection of taxes, etc.
40. Council to prescribe which licenses shall be applied for and granted.
41. Provisions of state law applicable to issuance of licenses.
42. Expiration of licenses.
43. Condemnation of real estate.
44. Voting precincts; election officers.
45. City to succeed to all rights, etc. of town of Weston.
46. Inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That the inhabitants of so much of the county of Lewis as are within the bounds prescribed by section two of this act, and their successors, shall be and remain, and they are hereby

made a body politic and corporate, by the name of "The City of Weston," and as such shall have perpetual succession and a common seal, and by that name may sue and be sued, plead and be impleaded, purchase, lease and hold real estate and personal property, necessary to the purposes of said corporation.

Sec. 2. The corporate limits of said city shall hereafter be as follows: Beginning at a stone, put for a corner at the mouth of Polk creek, on west bank of West Fork river, and on south bank of said creek; bearing thence up said creek north 36 west 21.40 poles to a stone; north 39 1-4 west 13.60 poles to a chestnut tree; north 33 west 6 poles to a beech; north 11 east 5.60 poles to a beech; north 42 3-4 east 12 poles to a beech; north 59 east 14 poles to a water-beech; north 23 3-4 west 5 poles to a large beech; the West Virginia Hospital for the Insane sewer crosses this line at "A"; north 79 west 12 poles to center of old Rover road, and 2.20 poles to a beech; south 21 west 30.72 poles, crossing said Polk creek, to a stone; south 26 east 26.82 poles to a stone; south 60 west 20 poles to a black oak, where a foot log used to be; south 73 1-2 west 10.50 poles to a water gap; south 60 3-4 west 22 poles to a stone; north 88 3-4 west 15.60 poles to a stone, the West Virginia Hospital for the Insane sewer crossing this line at "B," south 82 1-2 west 25 poles to a stone; north 33 1-2 west 57 poles to a sugar; north 31 1-2 west 46 poles to a stone on division line of land formerly owned by J. M. Bennett and the heirs of Jacob Butcher, deceased; thence south 31 west 2 poles to the center of the Polk creek aforesaid 5.44 poles to center of Staunton & Parkersburg Turnpike road; 96.40 poles to a stone on top of point, and on the division line of lands owned by Henry Flesher and the West Virginia Hospital for the Insane; and thence with aforesaid degree, 76.16 poles to a small white oak, on the north bank of Calf run; thence down said Calf run, south 27 east 6 poles to a stone; south 17 east 728 poles to a stone; south 11 1-2 east 30 poles to a stone; south 56 3-4 east 38 poles to a stone; north 20 1-2 east 2 poles to the mouth of Calf run; thence down the west bank to the said West Fork river; north 18 west 29 poles to a stone; north 76 1-2 east 21 poles to a sugar (down); south 38 1-4 east 59.60 poles to a chestnut tree; south 84 east 5 poles to a black oak; north 53 3-4 east 40 poles to a white oak below and near where the woolen factory formerly stood; north 35 east 16 poles to a stone opposite the mouth of Still House run (now called Town run); thence crossing said river, south

68 1-4 east 10 poles to a stone near the mouth of said Town run; thence up said run, south 19 1-2 east 9 poles to a stone; south 86 1-4 east 20 poles to a stone; south 49 1-2 east 42 poles to a stone; south 2 1-2 west 6.20 poles to a stone; south 32 1-2 east 27.50 poles to a stone in center of said run on the division line of lands formerly owned by William Matthew Edmiston and William E. Arnold; north 31 east 146 poles to a stone on the south bank of Stone Coal creek; thence down said creek north 25 west 6 poles to a locust; north 21 3-4 east 8 poles to a water elm; north 51 1-2 east 975 poles to a stone; south 76 east 2080 poles to a stone; north 30 1-4 east 672 poles to a stone; north 19 1-4 west 1350 poles to a large sugar; south 52 west 1390 poles to a stone; north 23 3-4 west 26 poles to a hickory; north 54 1-2 west 98 poles to a stone; north 3 3-4 east 2340 poles to a water elm; north 21 1-2 west 1064 poles to a stone at the mouth of Stone Coal creek, and on the north bank of said river; up said river south 44 west 48 poles to marks made on the ledge of rocks on the east bank of said river; thence north 63 west 10 poles to the beginning, containing about two hundred and seventy-three acres.

Sec. 3. The territory of said city shall be divided into four wards, beginning as follows:

*First ward.* Shall include all the land in the boundary on the west side of the West Fork river.

*Second ward.* Shall include all the land lying between the West Fork river and the alley between and parallel to Main street and Center street running from Town run to Stone Coal on a line with said alley.

*Third ward.* Shall include the lands lying between the said alley before named and the alley parallel and between Center and Court streets: down to the center of Third street; thence a south-east course along Third street to Center street; thence along on a line with the Buckhannon pike to the boundary line of said town, and

*Fourth ward.* Shall include all the land lying between the alley last mentioned to Town run and the south-east boundary line of said city; *provided, however,* that the council of said city shall have the right by ordinance to change, add to, diminish, increase, or make new the territory of said city.

Sec. 4. The municipal authorities of said city shall consist of

a mayor and eight councilmen, who together shall form a common council, and who shall receive such compensation as the council shall from time to time determine, and which shall not be increased or diminished during their term of office.

Sec. 5. All the corporate powers of said corporation shall be exercised by said council, or under its authority, except when otherwise provided.

Sec. 6. The mayor and councilmen, city attorney, chief of police, city clerk and street commissioner, at the time of their election or appointment, shall be freeholders in said city, and be entitled to vote for the members of the common council of said city, as residents and legal voters therein.

Sec. 7. The city attorney, chief of police, city clerk (who shall be the assessor), and street commissioner, shall be elected to hold their respective offices for a term of two years from the first Monday in April, or until their successors shall have been elected and qualified, and all other officers shall be appointed by the common council.

Sec. 8. On the Tuesday after the third Monday in March, one thousand nine hundred and nine, there shall be elected by the qualified voters of said city, a mayor, city attorney, city clerk, chief of police and street commissioner, who shall hold their respective offices for two years and until their successors shall be elected and qualified.

Sec. 9. On the same day first mentioned in the preceding section two members of the council shall be elected in each ward in said city, who shall reside in the ward for which they are elected; and the candidate receiving the highest number of votes shall be elected for four years from the first Monday in April succeeding his election, and the candidate receiving the next highest number of votes shall be elected for two years from the first Monday in April succeeding his election; and on the same day of each alternate year one member of the council shall be elected in each ward of the said city, whose term of office shall be two years from the first Monday in April succeeding his election, and until his successor shall be elected and qualified.

Sec. 10. Each ward shall constitute an election precinct, and the council shall establish a voting place in each, and the election of councilmen shall be by wards. No voter shall be entitled to vote at any city election, except in the ward in which he resides.



Sec. 11. Every male person residing in said city, shall be entitled to vote for all officers to be elected under this act; but no person who is a minor, or of unsound mind, or a pauper, or who receives aid from the treasury of said city, or who is under conviction of treason, felony or bribery in an election, or who has not resided in this state for one year, and in the city of Weston for six months prior to the election, and is not a *bona fide* resident of the ward in which he offers to vote, shall be entitled to vote at any election.

Sec. 12. In all municipal elections the mode of voting shall be by ballot, but the voter shall be left free to vote by open, sealed or secret ballot, as he may elect. The election in said city shall be held and conducted, and the result thereof certified, returned and finally determined under the laws in force in this state, relating to elections by the people at the time such election is held. The corporate authorities of said city shall perform the duties in relation to such election required by general laws of county courts and officers in force on the first day of March, eighteen hundred and ninety-one, concerning elections by the people, and such laws shall govern such election and be applicable thereto, and the penalties therein prescribed for offenders relating to such election shall be enforced against the offenders of such election, and such laws shall have the same force and effect as if they were especially applicable to corporate elections.

Sec. 13. When two or more persons shall receive an equal number of votes for councilman or other city officer, such tie shall be decided by the council in being.

Sec. 14. All contested elections shall be heard and determined by the common council for the time being; and the contest shall be made and concluded in the same manner as provided for in contests for county and district officers; and the common council shall conduct the proceedings in such cases as nearly as practicable in conformity with the proceedings of the county court in such cases.

Sec. 15. Whenever a vacancy shall occur from any cause in the office of mayor, councilman, city attorney, city clerk, chief of police or street commissioner, or any other elective office, the council shall immediately fill such vacancy by a vote of the majority of the council until the next election.

Sec. 16. The council shall also have authority to provide by

ordinance for the appointment of such other officers as shall be necessary and proper to carry into full force any authority, power or jurisdiction which is or shall be so vested in the said city or in the council or mayor, or any officer or body of officers thereof, and to grant to such officer so appointed the power necessary or proper for the purpose above mentioned. The tax collector shall have the power to collect all taxes levied and assessed by the council of said city, and all other assessments and money due the said city; and for that purpose shall have the power to distrain and sell property for the enforcement of such payment. And the said council shall, by ordinance, define the duties of all officers so elected or appointed as aforesaid, and allow them reasonable compensation, and which compensation shall not be increased or diminished during their term of office, and shall require and take from all those whose duty it is to receive funds, assets or property, or have charge of the same, such bonds, obligations and other writings as they shall deem necessary or proper to insure the faithful performance of their said duties. All officers so elected or appointed by the council shall hold their office or appointment during the will and pleasure of the said council, but no appointee shall hold beyond the current year for which he shall have been appointed without a new election by the said council. All officers so appointed or elected may be removed from office for malfeasance, nonfeasance or misfeasance by the council. The chief of police shall have all powers, rights and privileges within the corporate limits of said city in regard to the arrest of persons, and the execution and return of process, that can legally be exercised by a constable of the district within the same, and he and his sureties shall be liable to all fines, penalties and forfeitures that a constable of a district is legally liable to, for any failure or dereliction in his said office, to be recovered in the same manner and in the same courts that the same fines, penalties and failures are now recoverable against such district constable. It shall be the duty of the collector of taxes to collect all city taxes, licenses, levies, assessments and such other claims as are placed in his hands for collection by the council, and he may distrain and sell for such taxes and assessments, and he shall have in all other respects the same power as a sheriff of a county to enforce the payment and collections thereof. All officers appointed by the council must be residents of the said city at the time of their

appointment, and a removal from said city shall vacate their said offices.

Sec. 17. All officers elected and appointed under this act shall each, before entering upon the duties of his office, and within ten days from the time of his election or appointment, give bond required from any officer, take and subscribe an oath to faithfully and impartially discharge the duties of his office, and the oath to support the constitution of the United States, and the constitution of the state of West Virginia. The mayor having taken such an oath may administer the same to the councilmen and other officers. Certificates of said oath shall be recorded in the journal kept by the council.

Sec. 18. If any one who shall have been duly elected mayor, councilman, or to any other office herein provided for, shall not have been eligible as herein prescribed, or shall refuse or fail to take the oath required under this act, within the time prescribed, the council for the time being shall declare his office vacant and proceed to fill said vacancy by appointment as herein provided.

Sec. 19. The elective officers shall enter upon the duties of their offices within two weeks after they shall have been elected and shall continue therein until their successors are elected or appointed and qualified.

Sec. 20. The mayor shall be the chief executive officer of the said city, and shall take care that the orders, by-laws, ordinances, acts and resolutions of the council thereof are faithfully executed. He shall be *ex officio*, a justice and conservator of the peace within the city and shall, within the same, have, possess and exercise all the powers and perform all the duties vested by law in a justice of the peace, except that he shall have no jurisdiction in civil cases. Any warrant or other process issued by him may be executed at any place in the county. He shall have control of the police of the city, and may appoint special police officers whenever he deems it necessary, and may suspend any policeman for cause; and it shall be his duty to see that the peace and good order of the city are preserved; and that persons and property therein are protected; and to this end he may cause the arrest and detention of all riotous and disorderly persons in said city before issuing his warrant therefor. He shall have the power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate pay-

ment thereof, and in default of such payment thereof may commit the offending party to the jail of Lewis county or other place of imprisonment in such corporation, if there be one, until the fine or penalty and costs shall be paid, but the term of imprisonment in such case shall not exceed thirty days. In all cases where a person is sentenced to imprisonment, or to the payment of a fine of ten dollars or more, (and in no case shall a judgment for a fine of less than ten dollars be ordered or given by the mayor, if the defendant, his agent or attorney, object thereto) such person shall be allowed an appeal from such decision to the circuit court of Lewis county, upon the execution of an appeal bond, with surety deemed sufficient by the mayor, in a penalty double the amount of the fine and costs imposed by the mayor, with condition that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him by the circuit court on such appeal. If such appeal be taken, the warrant of arrest, (if there be any) the transcript of the judgment, the appeal bond and other papers of the case, shall be forthwith delivered by the mayor to the clerk of said court; and the court shall proceed to try the case upon indictment or presentment, and render such judgment, including that of costs, as the law and the evidence may require, but no judgment shall be rendered against said city for costs on such appeal.

The mayor may from time to time recommend to the council such measures as he may deem needful for the welfare of the city. The expense of maintaining any person committed to the jail of the county, or to any place of imprisonment in said city, by him, except it be to answer an indictment, or be under provisions of sections two hundred and twenty-seven and two hundred and twenty-eight of chapter fifty of the code of this state, shall be paid by said city. Said mayor shall pay all moneys received by him for fines or by virtue of his office belonging to said city to the treasurer of the city within one week after he receives the same. He shall receive a compensation for his services, to be fixed by the council, which shall not exceed five hundred dollars per annum, exclusive of fees, and which shall not be increased nor diminished during his continuance in office.

Sec. 21. The city clerk shall keep a journal of the proceedings of the council, and have charge of and preserve the records of the city, in the city building safe or vault, if there be one. In the

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absence from the city, or in the case of sickness or inability of the mayor, or during any vacancy in the office of mayor, the city clerk shall perform the duties of the mayor which pertain to him as the chief executive of said city, and be vested with all the powers necessary for the performance of such duties. He shall be conservator of the peace within the city.

Sec. 22. The presence of a majority of the council shall be necessary to make a quorum for the transaction of business.

Sec. 23. The council shall cause to be kept by the city clerk, in a well-bound book, to be called the journal, an accurate record of all the proceedings, ordinances, acts, orders and resolutions, and in another book, to be called the book of ordinances, accurate copies of all general ordinances adopted by the council, both of which shall be fully indexed and open to the inspection of any citizen of the city of Weston, or any one required to pay taxes therein, or who may be otherwise interested. All oaths and bonds of officers in the city, and all papers of the council shall be endorsed, filed and securely kept by the said clerk. The bonds of officers shall be recorded in a well-bound book to be called the record of bonds. Said city clerk shall perform all such other duties as may by ordinance of the council be prescribed. Said council may bind and print in pamphlet form all the general ordinances of said city, and transcripts of such ordinances, acts, orders and resolutions, certified by the city clerk, under the seal of the city, shall be deemed *prima facie* correct when sought to be used before any court, or before any justice.

Sec. 24. At a meeting of the council the proceedings of the last meeting shall be read and corrected, if erroneous, and signed by the presiding officer for the time being, and countersigned by the city clerk. Upon the call of any member, the ayes and noes upon any question shall be taken and recorded in the journal, and the roll for that purpose shall be called alphabetically.

Sec. 25. The mayor shall have a vote on all questions and shall decide all ties.

Sec. 26. The meetings of the council shall be held at such place in said city and at such time as they shall from time to time ordain and appoint, but it shall be lawful for the council by ordinance, to vest in any officer of said city, or in any member or number of members of their own body, the authority to call special

meetings; and it shall prescribe by ordinance the mode in which notice of such meeting shall be given, and no business shall be transacted at such special meeting unless a majority of all the members of the council shall be present, except that a less number may compel the attendance of absent members under such reasonable penalties as they may think proper to impose.

Sec. 27. All moneys belonging to the city shall be paid over to the city treasurer; and no money shall be paid out by him except as the same shall have been appropriated by the council, and upon an order signed by the mayor and city clerk, and not otherwise.

Sec. 28. The council shall adopt all needful and just ward regulations, whether general or special, for the good of the citizens thereof; and shall, also, authorize street expenditures in the several wards as equity and justice shall demand, and may authorize the collection of a special tax for a specific purpose.

Sec. 29. No money shall be appropriated, and no debt shall be contracted for any purpose whatever, except that the funds to meet the same shall have been first provided by levy duly laid, in accordance with the provisions of this act; and no contract shall be entered into involving or anticipating future levies, unless all questions connected with the same shall have been first submitted to a vote of the people and have received three-fifths of all the votes cast for and against the same.

Sec. 30. The council of said city shall have power to lay off, vacate, close, open, alter, grade and keep in good repair, the roads, streets, alleys, pavements, sidewalks, crossings, cross-walks, drains and gutters therein for the use of the citizens and the public, and to improve and light the same, and to keep them free from obstructions of every kind; to regulate the width of the pavements, sidewalks, foot-ways, drains and gutters to be kept in good order, free and clean, by the owners or occupants of the real property next adjacent thereto; to establish and regulate markets, prescribe the time of holding the same, provide suitable and convenient buildings therefor, and prevent the forestalling of such markets; to prevent injury or annoyance of the public or to individuals from anything dangerous, offensive or unwholesome; to prohibit or regulate slaughter houses, tan houses and factories within the corporate limits; and to prohibit the exercise of any offensive business, trade or employment; to abate all nuisances within the corporate

limits, and to require or compel the abatement or removal thereof at the expense of the person causing the same, or by or at the expense of the owner of the ground at the place they are found; to cause to be filled up, raised or drained by or at the expense of the owner, any city lot or tract of land covered or subject to be covered by stagnant water; to prevent horses, hogs, cattle, sheep and other animals and fowls of all kinds from going or being at large in said city; and as a means of prevention, said council may provide for the impounding and confining of said animals and fowls; and, upon the failure to reclaim, for the sale thereof; to protect places of divine worship and preserve order in and about the premises where such worship is held; to protect places of public instruction and schools, and to preserve order in and about all the school buildings; to regulate the keeping of gunpowder and other dangerous explosives and substances; to protect places of lawful assemblies; to regulate the building of houses and other structures; for the maintaining and making of division fences by the owners of adjacent premises; for the proper drainage of city lots and other parcels of land by or at the expense of the owner or occupant thereof, when such drainage shall be deemed necessary for the protection of the public health; to provide against danger or damage by fire; to punish assault and batteries, gambling resorts and gambling devices of every kind and character; including slot machines; to prohibit the keeping of or loitering in, or visiting houses of ill fame, or loitering by persons in a state of intoxication on the streets or congregating or loitering in saloons; to prevent lewd or lascivious conduct, the sale or exhibition of indecent pictures or other representations; the desecration of the Sabbath day and to provide for its orderly and lawful observance; to protect the persons of those residing or being within the city; to appoint, when necessary, a police force, permanent or temporarily; to assist the police in the discharge of their duties; to prevent swearing, the illegal sale of intoxicating liquors, mixtures and other preparations, porter, beer, ale, wine or other drinks of like nature; to build, or purchase, or lease, and to use a suitable place of imprisonment within said city for the safe keeping and punishment of persons charged with or convicted of the violation of ordinances; to erect, or authorize or prohibit the erection of gas or water works within the city limits; to prevent injury of such works, or the pollution of any gas or water used or

intended to be used by the people or by individuals; to provide for the cleanliness and healthfulness of all rivers or streams within the city limits; to provide for and regulate the measuring and weighing of hay, coal, lumber, or other articles sold or kept or offered for sale within said city, and to establish rates and charges for the use thereof; to create by ordinance such committees and boards and delegate thereto such authority as may be deemed necessary or advisable; to regulate the running speed of engines and cars and vehicles of every kind and character within said city, and to prohibit them from standing on street crossings; to provide for the annual assessment of taxable property within said city, including dogs kept therein, and to regulate their running at large; to provide for a revenue for the city for municipal purposes and to appropriate such revenues to its expenses, and generally to take such measures as may be deemed necessary or advisable to protect the property, public and private, within said city; to preserve and maintain peace, quiet and good order within said city; and to preserve and promote the health, safety and well-being of the inhabitants thereof.

Sec. 31. The said council shall have authority to pass all ordinances (not repugnant to the constitution of the United States or to the constitution and laws of the state of West Virginia, or to this act), which shall be necessary or proper to carry into full effect and force the authority and jurisdiction which is or shall be granted to or vested in said city, or in the council thereof, or in any officer or body of officers of said city, and to enforce any and all ordinances by reasonable fines and penalties, and by imprisonment; and upon failure to pay any fine or penalty imposed, by compelling defaulting party to labor without compensation at any of the public works or improvements undertaken, or to be undertaken by said city, or to labor at any work which said city may lawfully employ labor upon, at such rate per diem as the council may fix (but not at a less rate than is fixed by said council for like labor for other employees of said city), until any fine or fines imposed upon any such offender or offenders by said city shall have been fully paid and discharged, after deducting charges of support while in the custody of the officers of said city; *provided, however,* that no fines shall be imposed exceeding one hundred dollars, and that no person shall be imprisoned or



compelled to labor as aforesaid more than thirty days for any offense. The jurisdiction of said city for police and criminal purposes shall extend one mile beyond the corporate limits of said city in all directions.

In addition to the powers already enumerated, the said city council shall have power to order elections for bonding the city as provided by chapter forty-seven-a of the code of West Virginia of one thousand nine hundred and six, purchase, build, construct and maintain plants and erect buildings, or other necessary structures, with equipments for furnishing the city or its inhabitants, for public or private consumption, at a reasonable cost to the latter, with gas or other material, for both fuel and illuminating purposes, and electric or other lights for the lighting of its streets and alleys, and public and private buildings, to construct, improve, extend and expand water works for said city, and to contract for and to construct and own an adequate supply of pure, healthful water for said city, and its inhabitants, for public and private consumption, and do all things necessary to secure to said city, and its inhabitants, an adequate supply of pure and wholesome water, and to provide, contract for and construct an adequate sewerage system for said city.

Whenever anything for which a state license is required is to be done within said city, the council may require a city license therefor, and may impose a tax thereon for the use of said city.

And at each general state election, the question of granting or refusing licenses for the sale of spirituous liquors, wine, porter, ale, beer and drinks of like nature, shall, upon the petition in writing of at least twenty-five per cent. of the votes cast at the last general election of said county being presented to said county court of Lewis county within thirty days prior to said election, be submitted to the voters of the county. The persons voting in favor of granting such license shall have on their ballots the words printed or written: "For License," and those voting against the granting of such license shall have on their ballots printed or written: "Against License." If a majority of the votes cast on this question be in favor of license, it shall be the duty of the council, until the next general election, to grant such license, subject to the approval of and license therefor granted by the county court to any person applying therefor and entitled to the same under the pro-

visions of law; but if in the said county election, a majority of the votes so cast be opposed, no such license shall be granted. Each ballot voted shall have written or printed on it the words, "For License," and the words, "Against License," so that the voter of any ticket may vote by erasing the one term or the other so as to conform to his desires. But nothing in this act contained shall be construed to authorize the granting of such license, within said city, in case the granting of such license has, under general law, been prohibited within the county of Lewis.

The council shall require from every person so licensed a bond with good security, to be approved by the council, in a penalty of at least three thousand five hundred dollars, payable to said city by its corporate name, conditioned as prescribed in section twenty-eight of chapter thirty-two of the code of West Virginia, and may revoke such license at any time the condition of said bond be broken, upon five days' previous notice to the person holding the same. And suits may be prosecuted and maintained on such bond as prescribed in said section of said chapter by the same person, in the same manner, and to the same extent, as upon the bonds mentioned in said section, and all the provisions of said section in relation to the bonds therein mentioned shall be applicable to the bonds required by this section.

Sec. 32. The council of said city shall have authority within said city to require and grant licenses to owners of horses, hacks, carts, wagons, drays, bicycles, automobiles, and every description of wheeled vehicles and carriages kept for hire; and to levy and collect taxes thereon, and subject the same to such regulations as the interests and convenience of the inhabitants of said city, or the protection of paved streets, in the opinion of the council shall require; also to license and tax hawkers, auctioneers, junk dealers and peddlers within said city, and persons who temporarily station themselves upon a street to sell or exhibit articles, and all butchers and venders of meats, fruits or vegetables on the streets of the city may be required by the council to take out a license therefor. But nothing herein contained shall be construed to require any inhabitant of the county of Lewis to obtain a city license for the purpose of selling to the inhabitants of said city any meat, fruit or vegetables raised or produced by such inhabitant within said county. No license to permit the permanent occupancy for private use of an

open street, alley or public square, or any part thereof, or a use for private purposes that obstructs the free use of the streets, shall be given or granted. And said council shall have the authority by city ordinance, to grant or refuse to grant a license to keepers of hotels, inns, taverns and boarding houses, but no license shall be granted for anything prohibited by state law.

Sec. 33. Franchises shall be granted by the council, allowing to persons or corporations, for a limited time, such occupancy of portions of the streets as may be necessary for works of public utility and service, such as steam railway tracks, street railway tracks, poles and trolley wires, telephone and telegraph poles and subways, electric light and other electric poles, wires and subways, and gas and steam pipe lines. But no such franchise shall hereinafter be granted except under the following restrictions:

*First.* No ordinance, granting any franchise for the using of the streets, alleys or public grounds of the city for any of the purposes of public utility above named, or for any other purpose of like nature, shall be passed unless it shall have been first proposed in the council and notice of the object, nature and extent of such franchise shall have been published at least thirty days, by the applicant, in some newspaper published in the city of Weston, before being acted upon, and shall have received the votes of a majority of the members of the council at a regular meeting or meetings and after said publication. The votes thereon shall be taken by ayes and noes, and the same entered upon the journal. No such ordinance shall take effect until the expiration of twenty days after its passage, and if within the said twenty days a petition be filed with the city clerk signed by one-fifth of the qualified voters of the city, based upon the number of votes cast at the last city election, requesting it, the council shall submit such ordinance to the qualified voters of the city for ratification or rejection, at a special election to be held for that purpose within forty-five days after such petition is presented, and the votes for ratification and for rejection cast at such election shall be entered upon the journal. If a majority of the votes cast at such election shall be in favor of ratification, then such ordinance shall take effect from the time the vote is so entered upon the journal.

*Second.* Every grant of any such franchise shall be for a limited period of time. If no limit be expressly provided in the grant,

the franchise shall be valid for one year only. In no case shall the franchise extend for a period exceeding thirty years.

*Third.* No grant of any such franchise shall be made without, at the time of making it, provided that the grantee shall indemnify the city against all damages caused by the construction of such works. All reasonable additional provisions and conditions may be made for the protection of the public from unnecessary damage or inconvenience by reason of such works and the operation thereof.

*Fourth.* No grant of any franchise shall be made without, at the time of making it, providing that the city shall receive in consideration thereof a compensation, to be paid annually during the whole period; *provided, however,* that the principle of competition shall be employed by the council where it is offered so that the franchise, with prescribed terms and conditions as to its extent, and as to the rates to be charged to the public by it for its services, will be given to the person or corporation bidding or agreeing to pay therefor to the city the highest compensation, or so that the franchise, with prescribed conditions as to its extent, and the compensation that must be paid therefor, will be given to the person or corporation that will agree to render services to the public at the lowest rates.

*Fifth.* No grant of a franchise or the extension of, or an addition to, any line of such work, over any additional street or territory of the city, shall be made for a period extending beyond the time limited for the expiration of the franchise of the principal work of which it is an extension; and if the franchise of the principal company or work is one which was granted before this act goes into effect, and it not limited as to time, the franchise granted for the extension or addition shall nevertheless be made subject to the conditions hereof including a time limit of not exceeding thirty years. If a franchise be secured from the city by an individual or by an independent or new company, and the work constructed thereunder afterwards becomes a part of it, or be operated as a part of a larger work of the same kind whose franchise was previously obtained and is limited to expire earlier, such later franchise shall, by reason of such annexation, merger, or single operation, expire simultaneously with such earlier franchise.

*Sixth.* The council shall, in suitable, practicable terms, make it an express condition of the grant of any such franchise where it is

for a work that is useful chiefly to the local public, that at the expiration of such franchise, the grantee shall, if required by the council, sell to the city, the physical plant, at what it is then worth, independent of any value based upon the earning power thereof, and may also provide a means by arbitration or otherwise for determining what such value of the plant may be.

Sec. 33-a. Any twenty-five or more free-holders residing in said city, desiring to increase the corporate limits thereof, may file their petition in writing with the council thereof, setting forth the changes proposed in the metes and bounds of said city, and asking that a vote be taken upon the proposed change. The council shall thereupon order a vote of the qualified voters residing in said city to be taken upon the proposed change, at a time and place therein to be named in the order, not less than twenty, nor more than thirty days from the date thereof. The said council shall, at the same time order a vote of all such voters owning any part of such territory, whether they reside therein or not, to be taken upon the question, on the same day at some convenient place or near said additional territory, which vote shall be taken, superintended and conducted, and the result thereof ascertained, certified and returned, in the same manner and by the same persons that elections for city officers are held, superintended, conducted, ascertained, certified and returned. The ballots cast on such question shall have written or printed on them the words, "For Increase of Corporate Limits," or "Against Increase of Corporate Limits," as the voter may choose. If a majority of all votes so cast in said city, and a majority of all the votes cast by persons residing on or owning any part of the additional territory proposed to be included in said city limits, be in favor of the proposed change, the city limits shall be proposed by such petition from the entry of the order provided for in the following section.

Sec. 34. The council of said city shall enter the result of such vote upon its minutes and when the change proposed is adopted, as provided in the next preceding section, they shall certify the same to the circuit court of Lewis county, and said court shall thereafter enter an order in substance as follows: "A certificate of the council of the city of Weston was this day filed, showing that the corporate limits of the city of Weston have been increased in the manner required by law, and by such change the corporate

limits are as follows: Beginning at (here recite the boundary as changed.) It is therefore ordered that said increase in said corporate limits be, and the same is hereby approved and confirmed, and the clerk of the court is directed to deliver to the said council a certified copy of this order as soon as practicable after the rising of this court," and, from and after the date of such order, the corporate limits of said city shall be as set forth therein.

Sec. 35. A book, well bound and indexed, to be denominated the "docket," shall be kept in the office of the mayor, in which shall be noted each case brought before or tried by him, together with the proceedings therein, including a statement of the complaint, the summons, the return, the fact of appearance or non-appearance, the defense, the hearing, the judgment, the costs, and in case the judgment be one of conviction, the action taken to enforce the same. The record of each case shall be signed by the mayor, and the original papers thereof, if no appeal be taken, shall be kept together and preserved in his office; and the mayor shall deliver to his successor the docket and all books and papers pertaining to his office.

Sec. 36. The council shall have power to appoint and constitute a board of health, consisting of one reputable physician, and two of its own members, which said board of health under the supervision and with the approval of said council, shall have full power to make all needful rules and regulations for the keeping and maintaining of the said city in proper and healthful condition; and when such board of health shall have been elected and organized, it shall have exclusive control of all matters relating to the public health within the limits of the city.

Sec. 36-a. The council shall cause to be made annually and spread upon its minute book an accurate estimate of all ~~sums~~ which are or may become lawfully chargeable against the city, and which ought to be paid within one year; and it shall order a levy of so much as will in its judgment be necessary to pay the same. Such levy shall be upon all titheables and upon all real and personal property therein subject to state and county taxes, including a poll tax of not more than one dollar upon each male resident of said corporation over twenty-one years of age; *provided*, that such levy shall not exceed one dollar on each titheable and thirty-five cents on every one hundred dollars of the ascertained value of such property. At least once in each year the council shall cause to be

made up and published in one or more newspapers of the city a statement of the revenue received from the different sources, and of the expenditures upon the different accounts, for the preceding year or portion of the year, as the case may be.

Sec. 37. It shall be the duty of the city clerk, who shall be the assessor, to make an assessment of the property within the city subject to taxation, substantially in the manner and form in which assessments are made by the assessor of the county, and return the same to the council on or before the first day of June in each year, and for this purpose he shall have all powers conferred by law on county assessors. He shall list the number of dogs in the city and the names of the persons owning the same, which list shall be returned to the council. (See chapter forty-seven, section forty-one, code of West Virginia.) In order to aid the said council in ascertaining the property and titheables subject to taxation by said city, the city clerk (who shall act as assessor) of said city shall have access to all books and public records of Lewis county without expense to said city or assessor, and he shall also have the same power and be subject to the same penalties in ascertaining and assessing the property and subjects of taxation in said city as are granted and imposed upon the county assessors throughout the state by the general state law, and the council shall also have authority to prescribe by ordinance such other rules and regulations as may be necessary to enable and require such assessor to ascertain and properly assess all property and titheables liable to be taxed by said city so that such assessment and taxation shall be uniform. And the said city assessor, making the valuation for assessment, shall make the same assessment for both real and personal property as the assessor of said county for the assessment year assessed by the county assessor, and to enforce such ordinances by reasonable fines and penalties.

Sec. 38. There shall be a lien upon real estate within said city for city taxes assessed thereon and for all fines and penalties assessed to or imposed upon the owners thereof by the authorities of said city from the time the same is so assessed or imposed, which shall have priority over all other liens, except the lien for taxes due the state and county, and which may be enforced by the council in the same manner provided by law for the enforcement for the lien for county taxes. If any real estate within said city be returned delinquent for the non-payment of the taxes thereon, a copy of such

delinquent list may be certified by the council to the auditor, and the same may be sold for city taxes, interest and commissions thereon, in the same manner, at the same time, and by the same officers as real estate is sold for state taxes.

Sec 39. It shall be the duty of the city collector to receive one copy of the assessor's book, receipting to the council for the same, and for the taxes therein extended, and it shall be his duty to collect from the parties the entire amount of taxes with which they are severally charged from and after the first day of June, in each year, until the first day of August, of each year, and he shall in said book write the word "paid" opposite the name of the person so paying, and shall also receipt to said taxpayer for the taxes so paid.

He shall also receive such other moneys of the city as he is authorized by this chapter to receive, and all moneys ordered paid to him by the council, giving receipts to the parties paying, and shall keep an accurate account of the same; and his books shall at all times be open for inspection to any taxpayer or attorney of the city, and he shall produce said books to said council for inspection at any meeting thereof upon the order of said council.

He shall pay out the money in his hands upon the order of the council, signed by the mayor and clerk.

He shall, on or before the first Monday in April of each year, furnish to the council a full, complete and detailed statement of all moneys of which he is chargeable, or may have been received by him, up to the first day of April of that year, and shall, at any time in like manner, furnish a statement of all disbursements made by him during such previous year, with vouchers evidencing the same. He shall, upon the order of the council, at any time, submit a statement of amount of which he is chargeable, and his disbursements.

He shall receive all taxes upon licenses and receipt to the party paying the same by the endorsement upon the permit granted by order of council, which permit shall be furnished him by the clerk, and charge himself by the amount so received, and report to the council at its next regular meeting the amount so received by him.

He shall, upon all moneys coming into his hands as such treasurer, and duly paid or turned over to him upon orders of the



council, receive as compensation therefor a sum to be fixed by the council, not exceeding five per cent of the amount collected.

He shall, upon the expiration of his term of office, turn over to the council all moneys, books and other property in his possession belonging to the said city; and shall, before entering upon the duties of his office, execute a bond with good security, payable to the city of Weston, in the penalty of not less than fifteen thousand dollars, conditioned for the faithful performance of the duties of his office, and for the accounting for and paying as required by law all money which may come into his hands by virtue of his office, and shall be chargeable with all of the city taxes, levies and assessments, and money of the city that may come into his hands, and shall account therefor.

Sec. 40. The council shall prescribe by ordinance therein which licenses of all kinds shall be applied for and granted, and it shall require the payment of the taxes thereon before delivery to the person applying therefor.

Sec. 41. The general provisions of the state law, as embodied in the code of West Virginia, relating to state licenses, shall be deemed applicable to licenses of a similar character therein mentioned, when granted by or under the authority of the council of the said city.

Sec. 42. Licenses for the keeping of dogs shall expire on the thirtieth day of April next after they are granted, and all other licenses may be for such time as the council may determine.

Sec. 43. The council shall have the right to institute proceedings in the name of the city for the condemnation of real estate, for streets, alleys, drains, market, market grounds, city buildings, or other work or purpose of public utility. Such proceedings shall conform to the provisions of chapter forty-two of the code of West Virginia of one thousand nine hundred and six, and the expenses thereof shall be borne by the city.

Sec. 44. The regularly elected council, in being at the time this act shall take effect, shall appoint and provide a place or places for voting in the said city as herein prescribed, for the election herein provided for to be held in said city, and appoint election officers thereof, and shall pass all proper ordinances and orders to give this act full force and effect.

Sec. 45. The said city shall succeed to all rights, powers and

responsibilities of the town of Weston, and all regularly elected officers of said town acting as such at the time this act takes effect, shall continue until the first Monday in April, one thousand nine hundred and nine, and until their successors, the officers herein mentioned, are elected or appointed and qualified to exercise the powers, perform the duties, and receive the compensation heretofore conferred, prescribed and allowed by general law or by ordinance of said town. Such ordinances in force at the time referred to shall continue to have full operation and effect, as ordinances of the city of Weston until amended, repealed or suspended by the council of said city.

Sec. 46. All acts or parts of acts inconsistent with this act are hereby repealed, but this act shall not be construed to repeal, change or modify any previous acts not inconsistent with this act, or to take away any powers heretofore conferred upon the town of Weston, or upon the mayor or council, or any other of the officers thereof, conferred by general law, except so far as the same may be inconsistent with the powers hereby conferred.

## CHAPTER 11.

AN ACT to amend and re-enact sections forty-eight, fifty-one, fifty-four, sixty and one hundred of an act of the legislature of West Virginia entitled "An Act to amend, revise and consolidate into one act the act of the general assembly of Virginia, passed March eleventh, one thousand eight hundred and thirty-six, entitled 'An Act to incorporate the city of Wheeling in Ohio county,' and all subsequent acts, both of the general assembly of Virginia and of the legislature of West Virginia, which form a part of the charter of the city of Wheeling," passed February eleventh, one thousand nine hundred and seven, and to add thereto section fifty-nine-a.

(Passed February 26, 1909. In effect from passage. Approved by the Governor, March 3, 1909.)

### Sec.

48. Auditor; official bond; powers; receipt and disbursement of city funds; auditing accounts of officers; duties prescribed by council.
51. Establishing board of control; how composed. election of associate

### Sec.

- members of board; term of office.
54. Official bond; salaries; powers and duties of board of control; election of commissioners on parks and play-grounds; duties.

Sec.  
59a. Paving of streets, avenues, alleys; other public improvements; assessments to pay for; issuing of bonds; petitions of property owners for improvements; fixing costs of same.

Sec.  
60. City solicitor; how chosen; term of office.  
100. Beginning of terms of city officers; time to qualify; failure to qualify; inconsistent ordinances repealed.

*Be it enacted by the Legislature of West Virginia:*

That sections forty-eight, fifty-one, fifty-four, sixty and one hundred of an act of the legislature of West Virginia, entitled "An Act to amend, revise and consolidate into one act, the act of the general assembly of Virginia, passed March eleventh, one thousand eight hundred and thirty-six, entitled 'An Act to incorporate the city of Wheeling in Ohio county,' and all subsequent acts both of the general assembly and of the legislature of West Virginia, which form a part of the charter of the city of Wheeling," be amended and re-enacted and that section fifty-nine-a be added thereto, so as to read respectively as follows:

Sec. 48. The auditor shall give an official bond in the penalty of twenty-five thousand dollars. He shall receive for his services a salary the amount of which is to be fixed by council, not less than two thousand dollars, nor more than three thousand dollars per annum. The books of accounts of the financial transactions of the city, heretofore kept by the city clerk in pursuance of the ordinances of said city, shall be transferred to the auditor, who shall become and be the custodian thereof, and who shall be required to keep accounts of all loans to the city, the bonds issued therefor by the city, all contracts by and with the city, and all accounts of all pecuniary transactions by and with the city, and all disbursements made by the city, from the several funds in which its accounts are or may be required to be kept, and he shall act as the clerk of the second branch of council. No money shall be paid out of the treasury of the city, unless authorized by an ordinance or resolution of council of the city, and upon warrants signed by the auditor and countersigned by the mayor of the city. The auditor shall examine and audit the books of accounts of all officers and departments of the city and all accounts of the city kept on its behalf, or with or by an officer or agent of the city, shall at all times under all circumstances, be open to his inspection, as well as to the inspection of any committee of, or expert accountant employed by council. It shall be the duty of council to prescribe by

ordinance, in detail, the duties of the auditor, the same to be, in general, in harmony with the provisions and general intention of this act, in establishing said office.

Council shall require monthly settlements to be made by said auditor and full reports from him as to the state of all accounts, and the condition of the financial affairs of the city.

Sec. 51. There shall be a board of control for said city to be composed of the mayor, who shall be *ex officio* a member thereof, and two associate members. At the first election held under this act, there shall be elected from among the qualified voters of the city, two associate members of the board of whom the one receiving the highest number of votes shall serve for the term of four years and the one receiving the next highest number of votes shall serve for two years, and at each successive biennial election there shall be elected one member of said board for the term of four years.

Sec. 54. The two members of the board of control elected under section fifty of this act, shall each be required to give an official bond in the penalty of ten thousand dollars, and each of said members shall receive from the city a salary of not less than fifteen hundred nor more than twenty-five hundred dollars per annum.

The said board of control shall have the management and control of the water works, gas works, electrical works, public markets, scales, parks, wharves and all other additional works of public utility that may hereafter be owned by the city. They shall also have charge of the maintenance, improvements and repair of all the streets, alleys, wharves, public grounds, sewers, and other improvements owned by the city in or under such streets, alleys and wharves; they shall also have the management and control of the police department, fire department, health department, city prison, crematory, cemeteries and hospitals and all other departments and institutions of like nature owned by the city; they shall have power to employ, upon a salary, for the term of two years, a clerk of the board, a judge of police court, a city engineer, a wharf master, a market master for each market, a chief of the fire department, a health officer, who shall be the chief of the health department and a practicing physician, a building inspector and a superintendent for each of the other departments and institutions under their management and control, except as herein otherwise provided.

The board of control shall also elect three commissioners on parks and playgrounds, whose term of office shall be for two years or until their successors are elected. They shall have general supervision under the direction of the board of control of all squares, parks and playgrounds, and shall serve without compensation; *provided, however*, that they shall be furnished the necessary expenses for the maintenance of their office, in the city building.

The chiefs and superintendents of the various works, departments and institutions shall employ and discharge all subordinate employees in his department, subject to the approval of council. At all works of the city which are operated continuously throughout both day and night, the turns of labor of employees engaged in such continuous work shall not exceed eight hours out of twenty-four.

In all cases, in the selection or appointment of employees of the city, preference shall be given to persons, who are residents and taxpayers of the city. All salaries and wages to be paid to heads of the various departments and to subordinate employees must first be approved by council.

Sec. 59-a. If at any general city election, or at a special election held for such purpose, a majority of the voters of the city declare in favor thereof, the council of the city of Wheeling shall have authority upon recommendation of the board of control of said city, to cause any of its streets, avenues, alleys or parts thereof of such city to be paved with brick, or other permanent material and wherever needed in connection therewith to grade and curb such streets, avenues or alleys; to ordain that said improvements shall be paid for and assessed upon the property abutting on the same, in accordance with the provisions of this act, and in accordance with the various provisions of law now enacted or hereafter enacted applicable thereto and in accordance with this act. Whenever it is deemed necessary by the city of Wheeling to make such public improvements to be paid in part by special assessment, council shall declare by resolution the necessity of such improvement and thereupon prepare or cause to be prepared, plans, specifications, estimates and profiles of the proposed improvement, showing the grade of the same with reference to the property abutting thereon; which plans, specifications, estimates and profiles shall be filed in the office of the board of control, and shall be

open to the inspection of all persons interested. Not earlier than two weeks after the passage of said resolution and before any such improvement is begun, council shall by ordinance determine the general nature of the improvement, what shall be the grade of the street, avenue, alley or other public place to be improved, as well as the grade or elevation of the curbs, and approve the plans, specifications, estimates and profiles of the proposed improvements. Council shall determine in said ordinance, the method of assessment, the mode of payment therefor and shall declare whether or not bonds shall be issued in anticipation of the collection of the same. Assessments for any improvement may be payable in one to ten installments and at such times as council may prescribe, and when bonds are issued in anticipation of the collection of assessments, the interest thereon shall be treated as part of the cost of the improvement for which assessment may be made: Said bonds shall be made payable in not less than ten years nor more than twenty years and shall be issued, advertised and sold as bonds of municipal corporations in this state are now issued, advertised and sold. If said assessments or any installments thereof shall not be paid when due, they shall bear interest until the payment thereof, at the same rate as the bonds issued in anticipation of the collection of the same, and the city treasurer shall annually place upon the tax duplicate the penalty and interest herein provided for.

When a petition subscribed by sixty per cent of the owners of property abutting upon any street, avenue or alley of any description, between designated points, is regularly presented to the council for the purpose, the cost of any improvement of such street, avenue or alley shall be apportioned as follows: Two-thirds thereof to be paid by the abutting property owners thereof on both sides of said street, avenue or alley and the remaining one-third to be paid by the city, except in the case of a street whereon a street railway is being operated, the railway company shall pay for the new paving between the rails and a foot outside of the rails, and the remainder of the costs to be borne in the proportion of one-third to the city and the remaining two-thirds to the abutting property owners on both sides of said street, avenue or alley on which such street car line is being operated, the intersections to be paved at the expense of the city.

A notice of the passage of the ordinance required as above

provided for may be served upon the owner of each piece of property to be assessed or upon the persons in whose names the same may be assessed for taxation on the tax duplicate, in the manner provided by law for the service of summons in civil actions; *provided*, that if any of said owners or persons be not residents of the city of Wheeling, nor of the county of Ohio, then a notice of the passage of said ordinance shall be published at least twice a week in some newspaper of general circulation within the city of Wheeling, and such notice whether by service or publication shall be completed at least twenty days before the improvement is made or the assessment levied, and the return of the officer or person serving such notice, or a certified copy of such return shall be *prima facie* evidence of the service of the notice as therein stated. Council may by ordinance fix a time within which the owner shall file his claim, that he will sustain damages and within which time failure to file such claim shall be deemed a waiver of same, barring him from recovering damages, but not depriving the owner of his right to recover other damages arising without his fault, from the acts of the corporation, or its agents. Upon the filing of the claim for damages, the solicitor shall make a written application for a jury of freeholders to the circuit court of Ohio county or a judge thereof in vacation, and the court shall direct a summons of the jury in the manner provided for in the condemnation of property and fix the time and place for the inquiry and the assessment of such damages, which inquiry and assessments shall be confined to the claim as aforesaid and such proceedings shall be had thereafter shall be as apply in like cases by statute.

The assessments contemplated by this section shall be placed upon the tax duplicate and shall be payable in equal yearly installments to meet the bonds provided for in the ordinance ordering said improvement, at the city treasurer's office with interest at the rate provided in said bonds payable annually from the date to which such annual interest was computed on the amount of said bonds, or so much as remains unpaid from time to time until said bonds and interest are fully paid. Such assessments, with interest accruing thereon shall be a lien on the property abutting on the street, avenue or alley from the time the contract is entered into for the making of said improvement and shall remain a lien until fully paid, having precedence of all other liens except taxes and shall not be divested by any judicial sale unless the payment of

same is provided for by the proceeds of such sale; no mistake in the description of property or name of the owner or owners shall impair the said lien. Any owner of property against whom an assessment shall have been made, for such improvement shall have the right to pay the same or any part yet remaining unpaid in full, with interest thereon, to the next annual payment due on said assessment. Such payment shall discharge a lien on the property. If any owner shall sub-divide any abutting property after such lien attaches, he may discharge the same or any part in like manner.

Council shall have full power to pass any ordinance necessary to carry out the letter and spirit of this section, the manner and method of making improvements, and to establish regulations and provisions for proper enforcement of same, that are not inconsistent with this section or the laws now in force; and nothing herein shall be construed as depriving the said council of the right to cause any of the streets or alleys of the city to be paved or macadamized either with or without a petition therefor, and to pay for same out of the funds of said city the same as though this section had never been enacted.

Sec. 90. At the first meeting of council after the first charter election, or as soon thereafter as practicable, the two branches of council shall meet in joint session in the chamber of the second branch and elect a suitable person to be a solicitor of the city of Wheeling, who shall qualify and assume the duties of his office on the first Monday in July thereafter; the term of his office shall be for two years after said first Monday in July, and he shall hold his office until his successor is elected and qualified.

Sec. 100. The officers of the city elected at the first election held under the provisions of the charter and the officers to be elected by the council elected at said election, shall qualify and assume the duties of their offices on the first Monday in July, succeeding such election, and a failure to qualify on or before said first Monday in July, or a failure to enter upon the duties of their respective offices within ten days after said date shall create a vacancy in such office. The council elected at said first election shall organize and qualify within three days after said election. The councilmen and officers holding under the now existing charter shall continue in office until those elected at the first election under this charter shall enter upon their duties; *provided, however, that*



the members of the first branch of council elected at the charter election in January, one thousand nine hundred and seven, shall serve until the members of the first branch of council elected at the second election under this charter shall take their places. All ordinances of said city not inconsistent herewith, in force at the time this act goes into effect, shall continue to be in full force until changed by council, but the duties under such ordinances shall be performed by the proper officers elected and qualified under this act.

(House Bill No. 143.)

## CHAPTER 12.

AN ACT to amend and re-enact section seven of chapter one hundred and one of the acts of one thousand nine hundred and seven, and section eight of said chapter one hundred and one of the acts of one thousand eight hundred and ninety-seven, as amended by chapter seventy of the acts of one thousand nine hundred and three, in relation to the city of Clarksburg; and to further amend said chapter one hundred and one by adding thereto section eight-a, abolishing the office of commissioner of water works and creating in lieu thereof a water works and sewerage board, and for other purposes.

(Passed January 28, 1909. In effect from passage. Approved by the Governor, January 29, 1909.)

### Sec.

7. Defining city officers; when qualified; eligibility; appointive offices; length of term.
8. Providing for annual election; elective officers; terms of office; water works and sewerage board; political requirements.
- 8a. Powers and duties of water works and sewerage board; power to employ secretary, bookkeeper and collector; compensation;

duties of secretary, bookkeeper and collector; preparation of maps, plans and specifications; records of meetings; bond for bookkeeper and collector; revenues arising from operation of water works and sewerage system; disposition of same; issuance of bonds; succession to powers, rights, duties and obligations.

*Be it enacted by the Legislature of West Virginia:*

That section seven of chapter one hundred and one of the acts of one thousand eight hundred and ninety-seven, in relation to the city of Clarksburg, be amended and re-enacted so as to read as follows:

Sec. 7. There shall be a chief of police, city attorney, superintendent of streets, city physician, assessor, city collector and

treasurer, city surveyor, city clerk, and three members of the water works and sewerage board, of said city, all of whom shall at the time of their election, or appointment, be duly qualified voters in said city and entitled to vote for the members of its common council; and not more than two of the members of said water works and sewerage board shall be members of the same political party; nor shall they during their term of service be eligible to any other municipal office in said city. The city attorney, city physician and city surveyor shall be appointed by the common council, to hold their respective offices for the term of one year from the third Monday in April or until their successors shall have been appointed and qualified.

That section eight of chapter one hundred and one of the acts of one thousand eight hundred and ninety-seven, as amended and re-enacted by section one, chapter seventy, of the acts of one thousand nine hundred and three, be amended and re-enacted so as to read as follows:

Sec. 8. On the Tuesday after the first Monday in April, one thousand nine hundred and nine, and on said day of every succeeding year, there shall be elected by the qualified voters of the said city, a mayor, chief of police, superintendent of streets, assessor, city collector and treasurer, and city clerk, who shall hold their respective offices for one year and until their successors shall be elected and qualified. And on the said Tuesday after the first Monday in April, one thousand nine hundred and nine, there shall likewise be elected three members of the water works and sewerage board. Of the members of said board so elected on said date, the one receiving the highest number of votes shall hold office for three years; the one receiving the next highest number of votes for two years; and the one qualified as provided by section seven, and receiving the next highest number of votes for one year, respectively, and each until his successor shall be elected and qualified. And thereafter on the Tuesday after the first Monday in April of each year there shall be elected one member of the said water works and sewerage board, who shall hold office for the term of three years, or until his successor shall be elected and qualified. But at no time, as hereinbefore provided, shall more than two members of the said board belong to the same political party.

That said chapter one hundred and one of the acts of one thou-

sand eight hundred and ninety-seven be and it is hereby further amended by adding thereto section eight-a as follows:

Sec. 8-a. The water works and sewerage board of said city shall have general charge of the water works and sewerage systems of the said city of Clarksburg; they shall by and with the approval of the city council fix and regulate the rates and charges for water supplied to all consumers and shall prescribe such reasonable rules and regulations as may be deemed proper with reference to the use and consumption of water taken from the city mains; the terms and conditions upon which connections to the said mains, and to the sewerage system of said city shall be permitted, and the place and manner thereof. And shall further have the power, with like approval, to provide penalties by way of additional charges for the failure to pay water rents promptly, and to this end may cut off the supply of water to consumers who fail to pay for the same as required, and to refuse to furnish water to any building in said city unless the owners thereof are willing to assume liability for the payment of water rents thereat, and for the collection of said water rents and the enforcement of such rules and regulations may cause all proper suit or suits to be instituted and prosecuted in the name of the said city of Clarksburg.

They shall have power to employ a secretary, bookkeeper and collector, all of which duties may, in the discretion of the board, be performed by the same person; and likewise to employ a superintendent of the said water works and sewerage systems and such other employees and laborers as they may deem expedient and necessary, and to fix the compensation of the same. The members of said board shall receive such compensation as may be fixed from time to time by the city council, of the said city, which shall in no event be less than the compensation received by the members of said council, and the salary to be fixed by the said board for the said secretary, bookkeeper, collector and superintendent shall be reported to and approved by the said city council. The said secretary, bookkeeper and collector, superintendent and other employees shall perform such duties as may be severally required of them by the said board.

They shall cause to be made and kept on file for public information, in the office of the said board, or some other convenient and

accessible public office in the said city, at all times, maps, plans and details, showing the dams, pumping stations, reservoirs, tanks, pipes, valves, connections, sewerage lines and all other data necessary for a complete exhibition of the condition of the said water works and sewerage systems, which maps shall be from time to time revised and extended. They shall have the power from time to time to make all necessary repairs to the said water works and sewerage systems and to pay for the same, together with the current expenses of the maintenance and operation of the said water works and sewerage systems by warrants drawn by them upon the treasurer of the said city. *Provided, however,* that no expenditures shall be made by the said board under such repairs or operation in excess of the current revenues arising from the operation of the said water works and sewerage systems unless and until such further expenditures shall have been approved and authorized by the common council of said city.

Whenever in the opinion of said board it shall be deemed advisable to make any improvements, extensions or additions to the said water works and sewerage systems they shall cause to be prepared maps, plans and specifications of the same, which shall be submitted for approval to the common council of said city, and when approved by them the said board shall proceed to contract for such improvements, extensions or additions, which contract shall in turn be submitted for approval to the said city council; and no such improvements, extensions or additions shall at any time be made or authorized by the said city council nor contracts therefor approved by it until such maps, plans and specifications have been by the said board prepared and submitted to the said city council for its approval in the manner aforesaid.

The said board shall keep an accurate record of each and every meeting held by it and of the business transacted thereat; they shall cause to be kept the accounts of the said water works and sewerage systems of said city, charging the same with all moneys expended in repair, extension, improvements or operation thereof, and with the interest upon any bonds the proceeds of which have been, or are to be devoted to the said systems, and with the sinking fund provided for the payment of the same, and crediting said systems with all revenues derived from the sale of water or otherwise. They shall require of the bookkeeper and collector employed

by them, bond with adequate penalty, conditioned upon the faithful performance of his said duties, and the proper accounting for any moneys which may come into his hands by virtue of such employment. All books, records, papers and accounts of said board shall at all times be open to inspection by the city council or by any duly appointed committee thereof. And on the last business day of each and every month said board shall cause to be paid over to the city collector and treasurer all moneys in their hands, taking his receipt therefor, and shall furnish the city council at its next regular meeting thereafter an itemized statement of the amount of money received and paid out by them during such month, and the balance in the hands of the said city collector and treasurer, arising from the said water works and sewerage systems. They shall audit all bills to be paid out of said funds and issue warrants therefor, and an account thereof shall be laid before the city council in the manner hereinbefore provided.

The revenues arising from the operation of said water works and sewerage systems shall be devoted to the payment of the costs of operation and repair thereof, to the interest upon any bonds the proceeds of which may have been expended in the repair, improvement or extension of the said water works and sewerage systems, and of the sinking fund to be provided for the payment of the same, and in the improvement and extension of the said water works and sewerage systems; and no portion of the revenue so arising shall be expended by the said city council for any other purpose than as herein provided.

Whenever the common council of the said city and the requisite majority of the voters thereof shall have authorized in the manner provided by law, the issuance of bonds for the purpose of repairing, improving, enlarging or extending the water works and sewerage systems of the said city, the proceeds arising from the sale thereof shall be utilized by the said water works and sewerage board for the purposes for which the same were issued, in the manner hereinbefore provided and subject to all the provisions of this section. And subject to the provisions of this section the said board shall contract for all supplies, labor and material, and direct the progress of all work of repair, improvement, enlargement or extension.

So soon as the said water works and sewerage board shall have

been elected and qualified as herein provided, they shall immediately succeed to all the powers, rights, duties and obligations, which may have been vested prior thereto in any officer, board, commission or committee, created or appointed by the common council of said city touching the improvement, repair, alteration or extension of said water works or sewerage systems, or the sale of bonds therefor, or other matters herein committed to the said water works and sewerage board; and the powers of such officers, board, commission or committee so created, shall thereupon cease and determine.

(House Bill No. 343.)

## CHAPTER 13.

### AN ACT to create the independent school district of Beaver Pond, in the county of Mercer.

(Passed February 26, 1909. In effect from passage. Became a law without the approval of the Governor.)

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| <p>Sec.</p> <ol style="list-style-type: none"> <li>1. Independent school district; name.</li> <li>2. Board of education; present officers.</li> <li>3. Appointment and election of commissioners; vacancies; how filled.</li> <li>4. Choosing a president; term of office.</li> <li>5. Secretary; how selected; salary.</li> <li>6. Compensation of commissioners.</li> <li>7. In absence of president or secretary; who shall act.</li> <li>8. Regular and special meetings; quorum.</li> <li>9. Corporate name; powers vested in board.</li> <li>10. Enumeration of school youth.</li> <li>11. School property; maintenance of; levying of tax for building fund.</li> <li>12. Borrowing money on credit of building fund.</li> <li>13. Levy of tax for teacher's fund; what used for; extension of school term.</li> <li>14. Libraries for use of pupils and patrons.</li> <li>15. Failure to lay levy; remedy.</li> <li>16. Manner of laying levy; collecting and accounting for.</li> <li>17. Property exempt from taxation.</li> <li>18. Rules governing schools; truant schools.</li> <li>19. Board to prescribe books to be used.</li> <li>20. Colored children; provision for</li> </ol> | <p>Sec.</p> <ol style="list-style-type: none"> <li>21. Pupils entitled to admission; school age.</li> <li>22. Sub-districts; names, numbers, boundaries.</li> <li>23. Superintendent; powers and duties; vacancies; how filled.</li> <li>24. Assistant superintendent; how appointed.</li> <li>25. Appointment of examining committee; teachers and trustees.</li> <li>26. Restrictions placed on superintendent, assistants and teachers; violations.</li> <li>27. Teacher's certificates; how issued;</li> <li>28. By whom; state superintendent may revoke.</li> <li>29. Examination on additional subjects.</li> <li>30. Further duties of superintendent acting with approval of board.</li> <li>31. Rules governing teachers and employees; cause for removal.</li> <li>32. Appointment of teachers; salaries.</li> <li>33. High schools; establishing and maintaining.</li> <li>34. Petition of voters for consolidation of schools.</li> <li>35. District institutes; expenses of; term of institutes; provision for.</li> <li>36. Injury or damage to school property.</li> <li>37. Public gatherings in school houses.</li> <li>38. Medical inspection for school children.</li> <li>39. Inconsistent provisions void.</li> <li>40. When act becomes effective.</li> </ol> |
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*Be it enacted by the Legislature of West Virginia:*

Sec. 1. The magisterial district of Beaver Pond, in the county

Sec. 1. The magisterial district of Beaver Pond, in the county of Mercer, as now bounded and designated in the records of the clerk of the county court of said county, shall be, and is hereby created an independent school district, to be known as the "Beaver Pond Independent School District."

Sec. 2. There shall be a board of education for said district to consist of five commissioners, who shall be residents and freeholders thereof, at least one of whom shall reside outside of the corporate limits of the city of Bluefield. The president and commissioners now in office shall serve to the end of the term to which they have respectively been elected or appointed.

Sec. 3. At the regular meeting of the board of education held on the first Monday in July, one thousand nine hundred and nine, there shall be appointed by the board of education, in the manner hereinafter provided to fill vacancies, two school commissioners, one of whom shall reside outside of the corporate limits of the city of Bluefield, and who shall hold office until the first day of July, one thousand nine hundred and eleven.

At the general election held in the year one thousand nine hundred and ten there shall be elected two commissioners who shall succeed the two commissioners whose appointment is provided for in this section and whose term of office shall begin on the first day of July, one thousand nine hundred and eleven and continue for four years. There shall also be elected at the same time two commissioners whose term of office shall begin on the first day of July, one thousand nine hundred and eleven and continue six years.

At the general election held in the year one thousand nine hundred and twelve, there shall be elected one commissioner whose term of office shall begin on the first day of July, one thousand nine hundred and thirteen, and continue for six years.

All vacancies in the said board shall be filled by a majority vote of the remaining members of said board, but no person shall be so elected except upon the nomination of the superintendent of schools of the district. The commissioner or commissioners so appointed to fill such vacancy shall serve until the next general election, or until their successors are elected and qualified.

At the general election preceding the expiration of any commissioner's term, as above designated, his successor shall be elected

and qualified in the manner and form as prescribed by the general school law, and shall continue in office for a term of six years, or until his successor is elected and qualified.

Sec. 4. At a regular meeting of the board of education, to be held on the first Monday in July, one thousand nine hundred and eleven, and each year thereafter, one of the commissioners shall be elected as president of the board; *provided*, he shall receive a majority vote of all the commissioners, and shall continue to serve as such for the period of one year. He shall be allowed one vote on all questions.

Sec. 5. At the first regular meeting of the board of education on the first Monday of July of each year, a secretary shall be selected, who shall not be a member of the board, and who shall perform such duties as are prescribed by the general school law, and such other duties as may be prescribed by the board, and shall receive for his services such compensation as shall be fixed by the board.

Sec. 6. Each commissioner shall receive for his services such compensation as is allowed members of boards of education under the general school law.

Sec. 7. In the absence of the president or secretary, a president or secretary *pro tempore*, shall be elected.

Sec. 8. In addition to the regular meeting prescribed by the general school law, the board of education may hold regular meetings at such times and places within the district as it may appoint.

Special meetings may be called by the president, or at the written request of two commissioners, by the secretary; but no business shall be done at such special meetings except such as is embraced in the call.

Notice of such special meetings shall be served personally on each commissioner, or mailed to him at least two days prior to the meeting; but the presence of any commissioner at such special meeting, shall be sufficient evidence that he has been properly notified.

Not fewer than three members shall be required to constitute a quorum, but a smaller number may adjourn from day to day.

Sec. 9. The board of education of Beaver Pond district shall be a body corporate in law by the name of "Board of Education of the Independent District of Beaver Pond in the county of Mercer,"



and as such may sue and be sued, plead and be impleaded, contract and be contracted with, and have a common seal; may purchase, hold, sell and convey real or personal property for the purpose of education within the district, may receive any gift, grant, donations or devise for the benefit of education, may employ attorneys, become parties to suits and contracts, and do and perform any and all other corporate acts, necessary to the advancement of free school education in the said district.

It shall succeed and be substituted to all the rights of the former board of education of the district of Beaver Pond in the county of Mercer, and may prosecute and maintain any and all suits and proceedings now pending, or which may have been brought and prosecuted, in the name of the former board of education for the recovery of any money or property or damage to any property due to or vested in said board of education, and shall be liable in its corporate capacity for all claims legally existing against such board of education.

The title to all real estate and personal property now vested in the board of education of Beaver Pond district in the county of Mercer shall be, and is hereby vested in the board of education of the independent district, and all contracts of the former board now in force shall be, and are legally binding on the new board and on all other parties to said contracts.

Sec. 10. Annually, not later than the first day of April, the board of education shall cause to be taken the enumeration of school youth of the district as provided for by the general school law, and to this end they may employ competent persons and fix their compensation, or require the teachers to take said enumeration in the manner and form provided for in the general school law.

Sec. 11. It shall be the duty of the board of education to provide by purchase, condemnation, leasing, building, or otherwise, school houses and grounds, furniture, fixtures and appendages, and to keep the same in good order and repair, and to supply fuel and all other things necessary for the comfort and convenience of the teachers and pupils of the district; to pay the principal and interest on loans made pursuant to this act and all other necessary expenses incurred in the district not chargeable to the teachers' fund.

For the purpose mentioned in this section, the board of education annually in the manner and form and at the time provided by chapter nine of the acts of the legislature of West Virginia, extra session, one thousand nine hundred and eight, shall levy a tax on the taxable property of said district, not to exceed in any one year the rate specified in said act, on every one hundred dollars valuation thereof, according to the latest assessment for state and county taxation; *provided*, that any amendment or amendments or other change in said act made at the present or any future session of the legislature shall apply equally to the Beaver Pond independent school district as elsewhere in the state. The proceeds of the taxes so levied of school houses and sites sold, of all donations, devises and bequests applicable to any of the purposes mentioned in this section, and of any loans, that may be made for this purpose, shall constitute a fund to be known as the "Building Fund," to be used for the purpose named in this act. *Provided*, that a levy not to exceed ten cents on the one hundred dollars valuation of taxable property as aforesaid, may be paid in addition to the foregoing, in any year in which it is necessary to construct a new school building, or buildings, or to finish paying for any building already erected or being erected. The proceeds of such levy shall be known as the "Special Building Fund," and shall not be used for any purpose other than the erection of new school buildings and the providing of the same with necessary furniture and apparatus. *Provided, further*, that no such levy in addition to that provided for in said chapter nine of the acts of the legislature of West Virginia, extra session, one thousand nine hundred and eight, shall be made after the end of the school year, beginning July first, one thousand nine hundred and thirteen, and ending June thirtieth, one thousand nine hundred and fourteen.

Sec. 12. The board of education, in addition to the levy aforesaid, may borrow money for the purposes named in section eleven on the credit of the building fund; *provided*, that such loans, at no time, shall amount in the aggregate to more than can be paid by a levy at the rate of twenty cents on every one hundred dollars of the taxable property of the district per year, for four successive years; *provided, further*, that no debt shall be contracted under this section until all questions connected with the same, shall first have been submitted to a vote of the people of the district and shall have received three-fifths of all the votes cast, for and against the

same. Such election shall be held and conducted in the manner and form prescribed in section twenty-three of chapter forty-five of the code.

Sec. 13. In addition to the levy provided for the building fund, the board of education, annually, in the manner and form and at the time provided by chapter nine of the acts of the legislature of West Virginia, extra session, one thousand nine hundred and eight, shall levy for the support of the schools of the district such tax on the taxable property of the district as will, with the money received from the state for the support of free schools, be sufficient to keep said schools in operation not fewer than six months in the year; *provided*, that said tax shall not, in any one year, exceed the rate of thirty-five cents on every hundred dollars valuation, according to the last assessment made for state and county purposes.

The proceeds of this levy, together with the money received from the state as aforesaid, shall constitute a fund to be known as the "Teachers' Fund," and no part thereof shall be used for any purpose other than the payment of teachers' salaries, the salaries of the district superintendent and his assistants and office force, salaries of medical inspectors and supervisors of special lines.

*Provided, further*, that the board of education may extend the school term in any sub-district to as many months as they desire, according to the needs of that sub-district, so long as the levy for the teachers' fund is not increased beyond the limit imposed by this section.

Sec. 14. The board of education shall have power to establish and maintain one or more libraries, according to the needs of the district, for the use of the public school children and patrons, and to prescribe such regulations as it may deem proper for the government of the same, to purchase books, erect and furnish library buildings and to purchase and own so much land as is necessary for the same, to employ librarians and do all other things necessary to render such libraries effective and to pay expenses incurred under this section out of the building fund of the district.

Sec. 15. Upon failure of the board of education to pay the levies required by this act, the circuit court, upon the application of any taxpayer of the district, shall compel it to do so.

Sec. 16. The assessment made under this act shall be levied, collected and accounted for in the manner and form provided in the general school law.

Sec. 17. All school houses, grounds, furniture, and fixtures, and all other property belonging to the board of education for the use of the public schools shall be exempt from taxation and also from a sale on execution, or other process in the nature of an execution. Undisputed possession of real estate for a period of five years, shall be deemed to vest the title to the same in the board of education without the execution of a deed.

Sec. 18. The board of education shall have power to make all necessary rules and regulations for the government of the schools of the district, for the admission of pupils, for the exclusion of pupils whose attendance would be dangerous to the health, or detrimental to the morals or discipline of the schools. To this end, it may establish a truant school or schools, and require such pupils as it deems proper to attend the same.

Sec. 19. The board of education shall further have power to prescribe the text books to be used in the city schools and may furnish books and necessary supplies to indigent children attending school, may provide free text books under such regulations as it may deem proper, may provide one or more evening schools for such pupils as are necessarily prevented from attending day school, furnish all books, apparatus and other necessary supplies for the use of the schools, fix the salaries of janitors, and incur all other expenses necessary to make the school system efficient for the purposes for which it was established, and pay the same from the building fund of the district.

Sec. 20. The board of education shall make such provisions for the education of colored children as they may deem necessary; *provided*, that separate schools shall be provided for white and colored children, and in no case shall white and colored children be permitted or required to attend school together.

Sec. 21. All children, wards and apprentices of actual residence within the district, and between the ages of six and twenty-one years, shall be entitled to admission to the schools of the district, subject to the provisions of sections eighteen and twenty of this act, and the board may provide for the admission of the children of non-residents under such regulations and for such tuition as it may prescribe.

Sec. 22. The names, numbers and boundaries of the sub-districts shall be and remain as now fixed, but they may be changed at any time by order of the board; *provided*, that the admission of the

pupils resident in one sub-district to the schools of another sub-district shall rest with the board; *provided, further*, that should it seem to the board that any pupil would be benefited by being required to attend the school in an adjoining sub-district, it may, on its own motion, make such transfer.

Sec. 23. Annually, at the first meeting, or as soon thereafter as circumstances will allow, the board shall elect a superintendent for the schools of the district and fix his salary; *provided*, that nothing in this act shall prevent the board from contracting with such superintendent for a longer period than one year should it so desire. Such superintendent shall be known as "The Superintendent of Schools of Beaver Pond Independent School District," and in addition to the duties prescribed in this act shall have such powers and perform such duties as the board shall direct.

The superintendent of schools may be removed from office at any time for incompetency, neglect of duty, immorality, or for any palpable violation of law. But he shall not be so removed except upon charges preferred in writing by a school commissioner. A copy of such charges and notice of the time and place set for hearing shall be delivered to him at least five days before the time set for such hearing, and he shall be allowed to present any evidence of his innocence he may desire, and to be heard in his own defense.

A vacancy in the office of superintendent shall be filled by the board of education by appointment, whenever such vacancy shall occur.

Sec. 24. The board of education, upon the recommendation of the superintendent, may appoint as many assistant superintendents as may be necessary, fix their salaries and prescribe their duties.

Sec. 25. It shall be the duty of the superintendent of schools annually, at the first regular meeting of the board or as soon thereafter as is possible, to recommend to the board:

*First.* Two competent persons to act with him as an examining committee.

*Second.* A sufficient number of teachers to fill the schools of the district.

*Third.* Competent persons to fill vacancies in the offices of trustees in the various sub-districts; and no person shall be eligible to appointment as trustee who resides outside the sub-district for

which he is appointed, and his office shall be vacated by his removal from said sub-district.

The board of education may refuse to appoint any or all of the persons so recommended, and require the superintendent of schools to recommend others, but no assistant superintendent, supervisor, teacher, superintendent's office assistant or kindergarten teacher shall be employed except upon the recommendation of the superintendent of schools. *Provided*, that should the superintendent of schools, within a reasonable time after being required to do so, fail or refuse to recommend a sufficient number of persons under this section to fill vacancies, the board of education may proceed to fill such vacancies without his recommendation.

Sec. 26. Neither the superintendent of schools, nor any assistant superintendent, teacher, or supervisor shall directly or indirectly receive any gift, emolument or reward for his influence in recommending the use of any book, apparatus or furniture whatsoever in the schools of the district. And should the board discover that any such person has violated the provisions of this section such person shall forfeit his office at the discretion of the board, in addition to being subject to the penalties provided in the general school law; *provided*, that the acceptance of samples for examination shall not be considered as a violation of the provisions of this section.

Sec. 27. The district superintendent, upon proper examination, may issue teachers' certificates to such persons as are able to pass an examination equivalent in all respects to the state uniform examination as prescribed by the general school law, which will entitle the holder of such certificates to teach school within the district until the close of the school year in which the said certificate is granted; but no such certificate shall be issued to any person more than once, and a report of all such certificates shall be made to the state superintendent of free schools.

The state superintendent of free schools may, at his option revoke any certificate granted under this section.

Sec. 28. All certificates under the preceding section shall be granted in accordance with the provisions of the general school law.

Sec. 29. The board of education may require that the teachers of the district shall pass an examination on such subjects in addition to those prescribed by the general law as they may deem proper.

Sec. 30. It shall be the duty of the superintendent of schools, with the approval of the board of education :

*First.* To prescribe the branches to be taught in the high schools of the district.

*Second.* To carry out the general provisions of the course of study prescribed by the state board of education and to supplement the high school course thus prescribed and to adapt it to the high schools of the district.

*Third.* To prescribe regulations for the examination and graduation of pupils.

*Fourth.* To prescribe conditions for admission of pupils to the high schools, to prepare questions for the examination of such pupils, to provide the method for conducting such examinations, to issue certificates to such pupils as are deemed worthy to be admitted to high schools, and to have charge of all matters concerning the same. To this end, he may appoint teachers employed in the schools of the district to assist him, and the board of education may provide for the payment of such teachers out of the building fund of such compensation as it may deem proper.

*Fifth.* To revoke any certificate issued by the district superintendent on satisfactory evidence of incompetency, immorality, untruthfulness, drunkenness, or any cause which would have justified the withholding thereof when the same was granted.

*Sixth.* To keep a register of all certificates issued.

*Seventh.* To select instructors for the district institute hereinafter referred to, and to issue certificates of attendance to teachers attending same.

*Eighth.* To prescribe courses of reading to be pursued by the teachers of the district, arrange for examining them on the same, and issue certificates of proficiency on the subject so read.

*Ninth.* To adopt a seal.

*Tenth.* To select books for school libraries.

*Eleventh.* To recommend the renewal of first grade certificates.

*Twelfth.* To acquaint himself with the best methods in the schools of other cities; and to this end, the board of education may appropriate such sums out of the building fund of the district as it may deem proper to pay his traveling expenses.

*Thirteenth.* To prepare and have printed all necessary forms to be used in the district.

*Fourteenth.* To make such annual report to the board of education as it shall require.

*Fifteenth.* To provide suitable certificates for graduates of the grammar schools and diplomas for graduates from the high schools and prescribe the manner and circumstances under which the same may be conferred.

*Sixteenth.* To arrange with other schools and colleges for the recognition of the work done in the district.

Sec. 31. Teachers shall be subject, in all respects, to all rules and regulations adopted by the board of education and they may be removed by said board at any time for incompetency, immorality, untruthfulness, drunkenness, or insubordination, upon complaint of the superintendent of schools or any member of the board. The same rule shall apply to all employees of the board, including trustees of the sub-districts; *provided*, that such action shall be taken only after proper notice and a hearing in which the accused shall be heard in his own behalf.

Sec. 32. All teachers shall be appointed by the board of education upon the recommendation of the superintendent of schools, such appointments shall be made annually at the first regular meeting of the school year and said committee shall fix such salaries and prescribe such regulations regarding terms of office as it may deem proper.

Sec. 33. The board of education may establish and maintain one or more high schools within the district as they may deem proper; *provided* the levy for teachers' fund be not increased above the amount prescribed in section thirteen of this act.

Sec. 34. The board of education may, and upon the petition in writing of seventy-five per cent. of the voters in the sub-districts affected, they shall abolish any sub-district or sub-districts and consolidate the schools of the sub-districts so abolished in a new sub-district and define the boundaries of the same, and provide for conveyance and transportation of the pupils to and from school under such rules and regulations as it may prescribe.

Contracts for the transportation of pupils shall be let to the lowest responsible bidder, and all expenses thereof shall be paid out of the building fund of the district.

Sec. 35. The board of education may cause to be conducted within the district, one or more district institutes, as they may



deem necessary, and may pay the expense of such institutes out of the building fund of the district.

One such institute may be held for a period of five days, at such time during the school year as the board of education may direct. Such institute shall be held in all respects as the county institutes provided for in the general school laws, except as changed by the following provisions;

*First.* The district superintendent shall exercise all powers and perform all the duties with respect to such district institute, which are provided to be exercised and performed by the county superintendent, with respect to the county institute.

*Second.* The district superintendent with the approval of the board of education, shall select and appoint the institute instructors and fix the date at which the same is to be held.

*Third.* The board of education shall fix the compensation to be paid such instructors, and shall pay all expenses of such institute out of the building fund of the district.

*Fourth.* If such institute is held during the school term, the board of education may at their option, continue the pay of the teachers as though the week was regularly taught, or may pay for such institute attendance in the manner provided in section one hundred and six of chapter forty-five of the code of West Virginia.

*Fifth.* Attendance at such institute shall exempt the teacher so attending from attendance at the county institute.

Sec. 36. If any person shall mar, deface or otherwise injure any school house, out-building, fence, furniture, shade tree, or other school property of the district, the person or persons so offending, shall be liable to prosecution before any court having jurisdiction, and upon conviction shall be subject to a fine of not less than five dollars and the costs of prosecution, and in addition shall be liable for all damages done, which amount, when properly assessed, shall be paid into the building fund of the district.

If the injury be done by a minor, the parent or guardian shall be liable as aforesaid.

If the injury be not of a wilful character, the person so offending, or his parent or guardian, shall nevertheless be liable for the damage done.

It shall be the duty of the board of education to ascertain, if pos-

sible, by whom the damage was done and to cause the party or parties to be arrested and prosecuted in the name and on behalf of said board of education. It shall be the duty of all trustees, teachers, and other employees of the board of education to report to them any matter which will lead to arrest and conviction of such persons.

Sec. 37. The board of education may prescribe the circumstances, under which the school houses of the district, may be used for public gatherings.

Sec. 38. The board of education shall have power to provide for medical inspection of the children in the schools of the district, and may pay such inspectors out of the teachers' fund.

Sec. 39. All provisions of the general school law and all laws and acts heretofore existing which are in any manner inconsistent with the provisions of this act, shall be void within the independent school district of Beaver Pond, otherwise, the said general school law shall remain in full force and effect in this district, as elsewhere in the state.

Sec. 40. This act shall not become effective until the question of the creation of said district shall first have been submitted to the voters of Beaver Pond district, at an election to be held on the third day of April, one thousand nine hundred and nine, at the general election precincts in said district. The ballots used at said election shall have written or printed thereon, "For Creation of Independent School District of Beaver Pond" and "Against Creation of Independent School District of Beaver Pond" and the said election shall be conducted and the result thereof ascertained, in the manner provided for the conduct of election under the general election laws. In case a majority of the votes cast at said election shall be in favor of the creation of said district, then this act shall be in effect from and after the result of such election is decided.

(Senate Bill No. 158.)

## CHAPTER 14.

AN ACT to amend and re-enact section six of chapter fifty of the acts of the legislature of one thousand eight hundred and ninety-five, relating to the independent school district of Bridgeport.

(Passed February 26, 1909. In effect from passage. Approved by the Governor March 1, 1909.)

<p>Sec. 6. Power to borrow money and issue bonds; rate of interest and when payable; indebtedness lim-</p>		Stat.	<p>ited; bond issues to be submitted to vote of people.</p>
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*Be it enacted by the Legislature of West Virginia:*

That section six of chapter fifty of the acts of one thousand eight hundred and ninety-five, relating to the independent school district of Bridgeport, be amended and re-enacted, to read as follows:

Sec. 6. In addition to the levies provided for in the preceding section, the board of education of the aforesaid independent district, shall be and is authorized, and is hereby empowered to borrow money and issue bonds therefor, for the purpose of erecting and completing one or more public school buildings, for the use of said independent district.

Said bonds shall draw no greater rate of interest than six per centum per annum, and shall be made payable in not less than one nor more than twenty years; *provided*, such indebtedness shall not exceed, including existing indebtedness, in the aggregate, five per centum per annum of the taxable property in said independent school district of Bridgeport, to be ascertained by the last assessment made for state and county taxes next before incurring such indebtedness, nor without, at the same time, providing for the collection of a direct annual tax, sufficient to pay annually the interest on such indebtedness and the principal thereof, within and not exceeding twenty years: and *provided, further*, that no debt shall be incurred or contracted under this act, unless all questions connected therewith, shall have been first submitted in the manner prescribed by law, to the voters of the said independent district at an election held for that purpose, and shall have received three fifths of all the votes cast for and against the same.

(House Bill No. 25.)

**CHAPTER 15.**

AN ACT to empower the board of education of the independent school district for the town of Henry, in the county of Clay, to borrow money and issue bonds, for the erection and furnishing of a public school building.

(Passed February 10, 1909. In effect ninety days from passage. Approved by the Governor February 19, 1909.)

Sec.

1. Empowering board of education to borrow money and issue bonds: sum not to exceed ten thousand dollars; use to be made of such sum; fixing interest of bonds: basis of assessment upon which

Sec.

bonds may be issued; provision for collection of a direct annual tax; question must be submitted to voters; manner in which election shall be held.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That the board of education of the independent school district for the town of Henry, in the county of Clay, be and is hereby authorized and empowered, at any time within three years from the passage of this act, to borrow a sum of money not exceeding ten thousand dollars, and to issue therefor bonds, for the purpose of erecting and furnishing a public school building for the use of said independent school district. Said bonds shall draw no greater rate of interest than five per cent per annum, and shall be made payable in not less than five years and not more than twenty years; *provided*, that such indebtedness, in the aggregate, shall not exceed, including existing indebtedness, two and one half per cent of the taxable property in said independent school district, to be ascertained by the last assessment made for state and county taxes next before the incurring of such indebtedness, nor without, at the same time providing for the collection of a direct annual tax sufficient to pay, annually, the interest on such indebtedness and the principal thereof, when due and payable; and *provided, further*, that no debt shall be contracted under this act unless all questions connected shall have been first submitted to the voters of the said independent school district, at an election to be held for that purpose, and shall have received three-fifths of all the votes cast, for and against the same.

Said election shall be held, after thirty days notice, published in some newspaper of general circulation in the said independent school district in the town of Henry, at the court house therein, and shall be conducted under the supervision and the result ascertained and certified by the said board of education.

(Senate Bill No. 119.)

## CHAPTER 16

AN ACT to amend and re-enact chapter one of the acts of one thousand eight hundred and eighty-nine of the legislature of West Virginia, creating the "School District of Huntington," as amended by chapter seventy-four of the acts of one thousand eight hundred and ninety-one, chapter fifty-six of the acts of one thousand eight hundred and ninety-five, chapter eighty-three of the acts of one thousand eight hundred and ninety-seven, chapter one hundred and thirty of the acts of one thousand nine hundred and one, and chapter seventy-nine of the acts of one thousand nine hundred and three; and to change and enlarge the boundary limits of said independent school district, so as to include territory within the limits of "The Independent School District of Central City," established by chapter eighty of the acts of one thousand nine hundred and three, and additional territory, and to abolish "The Independent School District of Central City."

(Passed February 24, 1909. In effect March 1, 1909. Approved by the Governor, March 1, 1909.)

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| <p>Sec.</p> <p>1. Board of education independent school district of Huntington; corporate powers.</p> <p>2. Territorial limits; elections.</p> <p>3. Election of board of education; term of office; non-partisan board.</p> <p>4. Vacancy.</p> <p>5. Compensation; affidavit to be filed; eligibility.</p> <p>6. President of board.</p> <p>7. Secretary; duties; compensation.</p> <p>8. Regular and special meetings.</p> <p>9. Corporate powers.</p> <p>10. Enumeration of youth.</p> <p>11. Duty of state superintendent to specify result of enumeration to auditor; duty of auditor in apportioning money for school purposes.</p> <p>12. Annual levy.</p> <p>13. Sheriff's settlement with board.</p> <p>14. Government of schools.</p> <p>15. Establishment of schools and high schools.</p> <p>16. Admission to schools.</p> <p>17. Separate schools for colored children.</p> | <p>Sec.</p> <p>18. How money paid out by sheriff.</p> <p>19. Sheriff to account to board for all moneys paid out by him for school purposes.</p> <p>20. Penalty for failure of sheriff to make annual settlement.</p> <p>21. School property exempt from taxation.</p> <p>22. Appointment of superintendent; term; who eligible; duties; vacancy.</p> <p>23. Board of examiners; duties; examination fee; classes of certificates; expenses of conducting examinations; when certificate may be granted without examination.</p> <p>24. City institutes for teachers.</p> <p>25. Appointment of teachers.</p> <p>26. Penalty for injuring any school property.</p> <p>27. Abolishment of independent school district of Central City; Huntington district to pay all indebtedness of Central City district.</p> <p>27-a. Laying of levies.</p> <p>28. Inconsistent acts repealed.</p> |
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*Be it enacted by the Legislature of West Virginia:*

That chapter one of the acts of one thousand eight hundred and

eighty-nine of the legislature of West Virginia, creating the school district of Huntington, as amended by chapter seventy-four of the acts of one thousand eight hundred and ninety-one, chapter fifty-six of the acts of one thousand eight hundred and ninety-five chapter eighty-three of the acts of one thousand eight hundred and ninety-seven, chapter one hundred and thirty of the acts of one thousand nine hundred and one, and chapter seventy-nine of the acts of one thousand nine hundred and three, be amended and re-enacted so as to change and enlarge the boundary limits of said school district of Huntington, and to abolish "The Independent School District of Central City," created by chapter eighty of the acts of one thousand nine hundred and three, to read as follows:

Sec. 1. That part of the county of Cabell included in the limits hereinafter mentioned in section two of this act is hereby made and constituted an independent school district, and the board of education therefor shall be known as "The Board of Education of the Independent District of Huntington in the county of Cabell," and as such shall have perpetual succession and a seal, by that name may sue and be sued, plead and be impleaded, and purchase, sell, lease and hold real and personal property necessary to the purposes of said corporation, as provided by section seven of chapter forty-five of the code.

Sec. 2 The territorial limits of said school district of Huntington shall be as follows.

Beginning at a stake at low water mark on the Ohio river (southerly side thereof), about one half mile above the mouth of Four Pole creek, and at the intersection of the easterly line of the Williams land with said low water mark; thence easterly and up the Ohio river, with low water mark thereof to its intersection with low water mark of the easterly side of the Guyandotte river; thence southerly, with the low water mark of Guyandotte river, with the easterly side thereof, to a point directly opposite the mouth of the Crump branch, a tributary of said Guyandotte river on the westerly side thereof; thence westerly in a straight line and crossing Guyandotte river to the mouth of said Crump branch; thence southerly with the westerly line of the Isaac Crump lands to what is known as the Military line; thence westerly with said Military line to its intersection with the south-easterly corporation line of the city of Huntington as heretofore constituted by chapter one hundred and fifty of the acts of the legislature of one thousand nine hundred

and one, it also being the easterly line of the lands of the Huntington Land Company (formerly the Central Land Company of West Virginia); thence with said corporation line (and likewise line of said land company) in a south-westerly direction, crossing Four Pole creek to the south-east corner of the lands of said land company (and likewise the south-east corner at said corporation boundary); thence following the lines of said corporation line (and likewise the lines of said land company), in a westerly and northerly direction, respectively, to and crossing said Four Pole creek to the north bank thereof; thence in a westerly direction, and down Four Pole creek with the north bank thereof, to the intersection of said creek with the southerly line of the right of way of the Chesapeake and Ohio railway company; and continuing westerly with said southerly line of said railway right of way to its intersection with the easterly line of the Williams land; thence northerly, with said easterly line of said Williams land to the beginning, it being the same limits embraced within the corporate limits of the city of Huntington as constituted by an act of the legislature of one thousand nine hundred and nine, amending the charter of said city of Huntington.

*Provided, however,* that before this act shall take effect as to the territory proposed to be included in the said "School District of Huntington," from the school district of Huntington, as existing before this act went into effect, it shall be submitted to the voters of the school district of Huntington at a special election to be held in said district under the direction of the board of education thereof, to be held on the twenty-second day of March, one thousand nine hundred and nine; and before the same shall take effect as to the territory proposed to be included in said "School District of Huntington," from the independent school district of Central City, it shall be submitted to the voters of the said school district at a special election to be held in said district, under the direction of the board of education thereof, on the twenty-second day of March, one thousand nine hundred and nine; and before the same shall take effect as to any part of the magisterial district of Guyandotte proposed to be included in said "School District of Huntington," from said district, it shall be submitted to the voters of said magisterial district at a special election to be held in said district, under the direction of the board of education thereof, on the twenty-second day of March, one thousand nine hundred and nine.

Sec. 3. The qualified voters of said district shall elect eight persons who shall compose the board of education of said district. The members of said board shall be elected at the regular election held in the city of Huntington for the election of municipal officers for said city; and they shall hold their said offices for the term of six years and until their successors shall have been elected and qualified. *Provided*, that at the first election to be held on the second Tuesday in May, one thousand nine hundred and nine, four members of said board shall be elected for three years, and four members for the term of six years, such persons to be designated on the ballot voted at said election "for short term" and "for long term," respectively, and thereafter, in every third year, at the election for municipal officers of said city, four persons for members of said board shall be elected for the full term of six years.

The nomination of candidates for said board shall be made and certified in the same manner as provided for the nomination of candidates for the board of commissioners of said city under the provisions of an act of the legislature of one thousand nine hundred and nine amending the charter of said city of Huntington; and such candidates for members of the board of education shall be voted for, elected and the result of the election ascertained and declared at the time and in the same manner as provided by said act of the legislature of one thousand nine hundred and nine for the election of members of said board of commissioners. *Provided*, that in no event shall there be, for the short term at said first election, or for long term at any election, more than two persons elected from the same political party, it being the intention of this act to make and keep said board of education non-partisan, and that no political party, at any time, shall have on said board more than one-half of the members to be elected thereto.

The election for members of said board of education shall be at the same time, and shall be held, returned and the result thereof ascertained and declared in the same manner and under the supervision of the same authorities as is provided for the election of the board of commissioners of said city of Huntington by said act of the legislature of one thousand nine hundred and nine.

The term of office of the members of the board of education shall commence on the first Monday of June following their election; and if any member fail to qualify, by making and filing the oath required by section five of this act, within thirty days after he shall have



been declared elected, his said office shall *ipso facto* become vacant.

All contested elections for members of the board shall be had and conducted in the same manner as provided by section thirty-seven of the charter of the city of Huntington, as amended by the legislature of one thousand nine hundred and nine.

Sec. 4. If a vacancy occurs on the board it shall be filled by said board by the appointment thereto of some eligible person from the same ward of the city and from the same political party as the member whose vacancy is being filled. The person so appointed shall hold his said office until the next regular municipal election and until his successor shall have been elected at such election and shall have qualified.

Sec. 5. Each member of the board of education shall receive for his services as such member the sum of five dollars per month; but before entering upon the discharge of his duties each member shall make and file with the clerk of said board an affidavit that he will faithfully and impartially perform the duties of a member of said board during his term of office, to the best of his ability and judgment; that he will not discharge his duties as such member for the purpose of benefiting any political party, or with that aim in view; that he will not be or become pecuniarily interested in any contract which may be awarded at any time by said board, and that he will not directly or indirectly receive any gift, emolument or reward for his influence, in the purchase of books or supplies for the schools of said district or for awarding any contract by said board.

No person shall be eligible to hold the office of a member of said board of education who was not at the time of his election, or appointment, a qualified voter in said city:

Sec. 6. The board of education shall in the month of June every third year elect one of its members president of the board. The president shall perform such duties as usually devolve upon the presiding officer of a deliberative body, except that he shall have a vote upon each and every question as any other member of the board, but he shall have but one vote upon any one question. In his absence the board may choose a president *pro tempore* from among their number.

Sec. 7. The secretary shall record, in a book provided for the purpose, all the official acts and the proceedings of the board, which shall be a public record, open to the inspection of all persons inter-

ested therein. He shall preserve in his office all papers containing evidence of title, contracts and obligations; and in general, shall record and keep on file in his office all such papers and documents as may be required by any of the provisions of this act, or by order of the board of education. He shall annually, between the first and tenth of July, make report to the county superintendent of such facts in his possession as may be required by the general school law of the state. For his services he may receive such compensation, not exceeding six hundred dollars per annum, as the board may allow. In his absence the board may appoint a secretary *pro tempore*.

Sec. 8. The board of education shall hold stated meetings at such times and places as they may appoint, not less than five members being required to constitute a quorum for the transaction of business. Special meetings may be called by the president, or, at the request of two members, by the secretary. The concurrence of five members of the board shall be required to elect the superintendent or teachers, and to decide all questions involving the expenditure of money.

Sec. 9. The board of education of the independent district of Huntington in the county of Cabell, shall be a body corporate in law; and as such may purchase, hold, sell or convey real or personal property for the purpose of education within the district; may receive any gift, grant, donation, or devise; may become party to suits and contracts and do other corporate acts. They shall have the management of and be vested with the title to all real and personal property for the use of the public schools within the district, and shall manage and dispose of the same as will in their opinion best subserve the interest of the district.

Sec. 10. Annually, not later than the first day of April, the board of education shall cause to be taken an enumeration of all the youth as provided by sections one hundred and one, one hundred and two, one hundred and three and one hundred and four, of chapter forty-five of the code; *provided*, that in the year one thousand nine hundred and nine the board of education of the school district of Huntington as hertofore constituted, shall cause to be taken and report such enumeration of all the youth in the whole of the territory embraced in section two of this act.

Sec. 11. The state superintendent of schools, in his report to the auditor, shall specify separately the result of the enumeration

of youth in the district of Huntington and the remainder of Cabell county; and the auditor, in apportioning money for school purposes shall apportion to the Huntington district and to the rest of Cabell county separately, according to their respective numbers of youth, as furnished by the list furnished by the state superintendent; and the said superintendent shall draw his requisition upon the auditor in favor of the sheriff for such amounts as the district is entitled to receive; and at the same time shall notify the secretary of the board of education of the amount.

Sec. 12. The board of education may annually levy a tax not to exceed two-tenths of a mill on the dollar valuation for the establishment, support, maintenance, and increase of a public library, which shall be under the control of the said board of education.

Sec. 13. The sheriff shall annually on or immediately before the first day of July, make such settlement with the board of education as the general school law may provide.

Sec. 14. The board of education shall have power to make all necessary rules and regulations for the government of schools of the district, for the admission of pupils therein, for the exclusion of pupils whose attendance would be dangerous to the health or detrimental to the morals or discipline of the schools. They may prescribe a uniform list of text books for the use of the schools in the district, and may furnish books and stationery for the use of the schools in the districts, and may furnish books and stationery for the use of indigent children in attendance at the schools; they may provide a suitable number of evening schools during the fall and winter months, for the instruction of such youth, over twelve years of age, as are prevented by their daily vocations from attending day schools; they may furnish all necessary apparatus and books for the use of the schools, and incur all other expenses necessary to make the system efficient for the purpose for which it was established, and pay the same from the building fund of the district. They shall also fix the number of days in the school month within the district.

Sec. 15. The board of education shall have power to establish, within the district, such schools, including high schools, as may in their judgment, be best for the interests of the district. The branches to be taught in the high school, and other schools within the district, shall be prescribed by the superintendent, with the approval of the board of education. The schools of the district,

whether primary or otherwise, shall be subject to such grading as the board direct. The said high school shall be open to all pupils in the district, but no pupil shall be entitled to enter them until the superintendent shall have been satisfied that the said pupil has made due proficiency in the branches taught in the other schools of the city of Huntington.

Sec. 16. Admission to the various schools of the district shall be gratuitous to all white children, wards, and apprentices, or actual residents within the district, between the ages of six and twenty-one years; *provided*, that admission of pupils, residents of one sub-district to the schools of another, shall rest with the board of education. Non-residents of the district may be allowed to attend the schools of the district upon such terms as the board of education may prescribe.

Sec. 17. The board of education shall establish within the district one or more separate schools for colored children, when the whole number by enumeration exceeds thirty, so as to afford them as far as practicable, the advantages and privileges of a free school education. All such schools shall be under the management and control of the board of education, and shall be subject to like general regulations as to the other schools of the district; but under no circumstances shall colored children be allowed to attend the same school, or be classified with white children.

Sec. 18. No money shall be paid out by the sheriff except on a draft signed by the president and secretary of the board of education, and specifying on its face the particular account to which the same is chargeable; nor shall any credit be allowed to the sheriff, in his annual settlement, upon any voucher except such draft.

Sec. 19. The sheriff shall annually, as hereinbefore provided, make such settlement with the board of education, and account to said board for all moneys, from whom, and on what account, and the amount paid out for school purposes in the district, since the last settlement.

Sec. 20. In case the sheriff shall fail to make such annual settlement within the time prescribed in the preceding section, he shall forfeit five hundred dollars; to be recovered before any court having jurisdiction, for the use of the schools of the district. And it is hereby made the duty of the board of education to proceed forthwith, in case of such failure, by suit against such sheriff and his securities, to recover the penalty as aforesaid. But if before suit

shall have been entered the sheriff shall satisfy the board that owing to sickness or other causes which may seem to them sufficient, said settlement has been rendered impracticable, such further time may be allowed as the board may deem reasonable and just.

Sec. 21. All school houses, school house sites, and other property for the use of the public schools of the district, shall be exempt from taxation, and also from sale on execution or other process in the nature of an execution.

Sec. 22. A superintendent of schools for the said district shall be appointed by the said board, for a term of not more than four years, and his salary fixed by said board, at the first regular meeting of the board in May, or soon thereafter, except that in the year one thousand nine hundred and nine said superintendent shall be appointed in the month of June; but no person shall be employed as superintendent who shall not have had an experience of at least five years as superintendent or principal of public schools. Said superintendent in addition to the duties specified in this act, shall perform such other appropriate duties with relation to the schools of the city as the board may prescribe. He shall be liable to removal by the board of education for any palpable violation of the law or omissions of duty, but he shall not be removed unless charges be preferred to the board and notice of a hearing, with a copy of the charges, delivered to him and an opportunity given him to be heard in his defense. When the office shall have become vacant from any cause, before the expiration of the term for which the superintendent shall have been elected, the board of education shall fill the same by appointment for the unexpired term. It shall be the duty of the city superintendent to make such report to the board of education of the character and condition of the schools of the city of Huntington, as shall enable the secretary to make his required report to the county superintendent or state superintendent. The city superintendent shall not directly or indirectly receive any gift, emolument or reward, for his influence in recommending the use of any book, apparatus or furniture of any kind whatever, in the schools of the district.

Sec. 23. The board of education shall appoint two competent persons to act with the city superintendent as a board of examiners. It shall be the duty of said board of examiners to examine all applicants for positions as teachers in the schools of the district, and each person so examined shall pay a fee of one dollar, but no appli-

cant shall be entitled to examination who shall not furnish evidence satisfactory to the committee of good moral character, and a certificate of attendance upon the city institute, if the institute shall have been held prior to the examination.

(b) Two classes of certificates shall be granted, namely high school certificates and grammer certificates; and the board of education shall have power to make special regulations as to the branches to be given in examination in each class.

In each class the certificates shall be of three grades based upon the following scale:

First grade certificates shall be issued to all applicants who attain a general average of ninety per cent, and not lower than seventy-five per cent on any one branch. Second grade certificates shall be issued to all applicants who attain a general average of eighty per cent, and not lower than sixty-eight per cent on any one branch. Third grade certificates shall be issued to all applicants who attain a general average of seventy per cent, and not lower than sixty per cent on any one branch.

A first grade certificate shall be valid for a period of five years, and renewable for a like period on the payment of the usual examination fee; *provided*, that the holder thereof shall have taught successfully thereon for not less than three years; and it may be renewed thereafter from year to year under such special regulations as the board of education shall prescribe.

A second grade certificate shall be valid for a period of three years, but shall not be renewable.

A third grade certificate shall be valid for a period of one year, shall not be renewable, nor issued more than two years in succession to the same applicant.

(c) The board of examiners shall conduct examinations for the issuance of certificates to teach, at such times and places as the superintendent may appoint, and for the services rendered shall each receive such per diem compensation as the board of education may prescribe.

All expenses of conducting the examination, such as stationery, printing, postage, etc., shall be paid out of the fees received, the excessive fees, if any, to be turned into the building fund of said district.

(d) Upon receipt of an application endorsed by the chairman of the committee on teachers and by the superintendent of the city

schools, the board of examiners, by their unanimous vote, may, without examination, or, with such partial examination, as may be deemed advisable, issue a high school certificate based on a diploma from the West Virginia university, or from any other institution of equal rank, or based on the high school certificate issued by the state.

Under like conditions, the board of examiners, by unanimous vote, may, without examination, or, with such partial examination as may be deemed advisable, issue a grammar certificate, or a primary certificate, based on a first grade certificate issued by the state under the uniform system; or based on the professional certificate issued by the state; or, based on a first grade certificate issued by any other city of West Virginia acting under the laws of West Virginia, or based on a certificate heretofore issued by the independent school district of Central City; *provided*, that in all cases the applicant shall have taught successfully at least one year on such certificate which he presents, and, the usual examination fee of one dollar be paid for such issue.

Sec. 24. Teachers shall be subject, in all respects, to the rules and regulations adopted by the board of education, shall have power to establish city institutes for city teachers, to be held at such time and place as they may designate, and attendance upon these institutes shall be obligatory upon all teachers employed in the district; and they may be removed by the board for incompetency, or grossly immoral conduct, upon complaint of the superintendent or any member of the board.

Sec. 25. The board of education shall appoint all teachers for public schools of any grade within the district and fix their salaries; but no person shall be employed to teach in any public school of the district who shall not first have obtained from the examining committee a certificate, in duplicate, of qualification to teach a school of the grade for which the appointment is made, except that the superintendent and the members of the examining committee shall not be required to obtain any certificate.

Sec. 26. If any person or persons shall mar, deface, or otherwise injure any school house, out building, fence, furniture, or other property of the district, the person or persons so offending shall be liable to prosecution before the police court of the city of Huntington or any court having jurisdiction within the district; and upon conviction shall be subject to a fine of not less than five

dollars and costs of prosecution; and if the amount of damage shall exceed five dollars, the person or persons convicted of the offense shall be liable for the full amount thereof.

If the injury be done by a minor, the parent or guardian of said minor shall be liable as aforesaid. It shall be the duty of the board of education of the district in which the property damaged may be located to ascertain, if possible, by whom the offense was committed and when satisfied thereon, to cause the party or parties to be arrested, and tried for the offense, in the name and on behalf of the board of education; and all fines for damages collected by virtue of this section shall be paid into the district treasury, and be appropriated for the benefit of the schools of the district. All provisions of the general school law of the state, and all laws and acts heretofore existing, which are in any manner inconsistent with the provisions of this act, shall be void within the district; otherwise the said general school law shall remain in full force and effect in this district, as elsewhere in the state.

Sec. 27. The board of education of the independent district of Central City as heretofore constituted, shall continue to exercise its rights, powers and duties over the territory embraced in said school district until and including the last day of May, one thousand nine hundred and nine, at which time its rights, powers and duties shall cease, and said independent district of Central City shall, *ipso facto*, be abolished; and said board shall at once turn over to the board of education of the independent district of Huntington, as constituted by this act, all moneys, records and property belonging or pertaining to said Central City district; and any moneys so turned over to the board of education of Huntington independent district shall be used by said board, so far as necessary, to pay any legal outstanding claims against said Central City district, and the residue, if any, shall be used for general purposes. All claims or other demands owing to said Central City district are hereby transferred to the board of education of the Huntington district, as constituted by this act, and it is authorized in its own name to collect the same, for the purpose aforesaid, in all respects and in like manner as the board of education of the Central City district might have done.

The board of education of the Huntington district, as constituted by this act, shall assume and pay all of the indebtedness of whatever kind of said Central City district and said Huntington dis-



trict, as heretofore constituted, respectively, including the existing bonded indebtedness of each of said districts; and the board of education of the district constituted by this act shall provide for the accruing interest on said bonds, and for a sinking fund with which to pay said bonds. The board of education of the Huntington school district, as heretofore constituted, shall exercise its rights, powers and duties until their successors shall have been elected and qualified as prescribed by this act.

Sec. 27-a. The provisions of chapter nine of the acts of the special session of the legislature of one thousand nine hundred and eight and any subsequent amendments thereto shall govern the laying of all levies under this act.

Sec. 28. All other acts and parts of acts coming within the purview of this act and inconsistent herewith are hereby repealed.

## CHAPTER 17.

(Senate Bill No. 58.)

AN ACT to create and establish the independent school district of Logan in the county of Logan, state of West Virginia.

(Passed February 11, 1909. In effect ninety days from passage. Became a law without the approval of the Governor.)

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| <p>Sec. 1. Independent school district of Logan; boundary lines defined.</p> <p>2. Board of education; qualification; election.</p> <p>3. First meeting of board; election of president and secretary.</p> <p>4. Powers of board of education.</p> <p>5. Establishment of schools; high school; branches to be taught.</p> <p>6. Admission to the various schools.</p> <p>7. Duties of sheriff in the collection and disbursement of school fund.</p> <p>8. Principal; appointment and duties of.</p> <p>9. Teachers; assistant principal; appointment of.</p> <p>10. Duties of board in relation to school</p> | <p>houses, etc.; annual levy for building fund.</p> <p>11. Annual levy for teachers' fund.</p> <p>12. Collection of assessment; expenses not to exceed amount of available funds.</p> <p>13. Election for establishment of independent school district.</p> <p>14. Compensation of members of board of education; vacancy.</p> <p>15. President of board of education; secretary.</p> <p>16. Meetings of board; quorum; special meetings.</p> <p>17. Corporate powers of board.</p> <p>18. To establish schools for colored children.</p> <p>19. Inconsistent acts repealed.</p> |
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*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That in the event of a majority of the votes cast at an election to be held on the first Tuesday in May, one thousand nine hundred and nine, in Logan district, be in favor thereof, the fol-

lowing described territory, in the county of Logan, shall after the result of such election is ascertained and declared, be the independent school district of Logan, to-wit:

Beginning at a stake in the center line of the Guyandotte Valley railroad at Bill Ellis hollow; thence north 17 degrees 33 minutes east 854.65 feet to a dead sugar tree in said hollow; thence north 29 degrees 33 minutes west 7019 feet to a stake in the center line of said railroad at the mouth of Varney's branch; thence north 78 degrees 29 minutes west 528.07 feet, crossing Guyandotte river to a stake at high water mark on the lower edge of the county road; thence with the high water mark of said river to the mouth of Island creek, a distance of about one-half mile; thence with the right hand side of said creek as you ascend the same to the mouth of Coal branch; thence crossing said Island creek to a stake at high water mark; thence down said Island creek with the right hand side thereof as you descend to the mouth of a small tributary thereof known as the Tide; thence with the meanders of the Tide in an easterly direction to a stake at high water mark on the bank of the Guyandotte river at the east mouth of said Tide; thence following the right hand side of the Guyandotte river at high water mark as you ascend the same to a point opposite the mouth of the Bill Ellis hollow, a distance of about one mile; thence crossing said Guyandotte river to a stake, the point of beginning.

Sec. 2. The board of education of said district shall consist of three members, who to be eligible to election as such members of said board shall have paid either directly or indirectly, for the preceding year, in such territory, taxes on either real or personal property, or both, of the assessed value of five hundred dollars or have children of school age, who shall be elected by the qualified voters, resident therein and shall be vested with the same rights and exercise the same powers, perform the same duties, receive the same compensation and be governed by the same laws that boards of education otherwise than those of independent districts are governed by, except in so far as changed by the provisions of this act; and in event of the establishment of Logan independent school district, a board of education shall be elected on the second Tuesday in June, one thousand nine hundred and nine, who shall serve until their successors are elected and qualified, except that one member shall be elected for one year, one for two years and one for three years, and their terms of office shall begin on the first day of

July, following election; and after said first election, one member shall be elected annually on the second Tuesday in June; after the first election all subsequent elections shall be held in said district at such place or places as may be designated by the board of such district, and after two weeks notice published in all the newspapers published in said district, and by officers to be appointed by the board of education; the election to be held on the first Tuesday in May and second Tuesday in June, one thousand nine hundred and nine, shall be conducted by commissioners to be appointed by the county court of Logan county, and shall be at the usual voting places in the territory wherein such election is required to be held.

Sec. 3. At the first meeting of the board, which is hereby required to be held on the first Monday in July of each year, or as soon thereafter as practicable, the board shall organize by electing one of their members president; and shall also elect a secretary, who shall not be a member of the board, who shall perform the same duties and shall be allowed the same compensation as secretaries of other boards of education.

Sec. 4. The said board shall have exclusive control of all schools within said district; shall have power to make all necessary rules and regulations for the government of the schools of the district; for the admission of pupils therein and for the exclusion of pupils whose attendance would be dangerous to the health or detrimental to the morals or discipline of the school; they may prescribe a uniform list of text books for the use of the school in the district, but such list to conform to those provided by general law, and may furnish books and stationery for indigent children in attendance at the school; they may furnish all necessary apparatus and books for the use of the school, and incur all other necessary expenses to make the system efficient for the purpose for which it was established and pay the same from the building fund of the district.

Sec. 5. The board of education shall have power to establish within the district such schools, including a high school, by such name as may be prescribed by said board, as may in their judgment, be best for the interest of the district, and may issue bonds to raise sufficient funds wherewith to establish such high school; but no such high school shall be established, nor shall any bonds be issued till the question of the establishment of such high school and of the issuance of such bonds, be first submitted to the legal voters of the district at some election for school officers in said

district, and a two-thirds vote of the voters voting, be cast in favor of the establishment of such high school and the issuance of such bonds.

The branches to be taught in the high school and other schools in the district, shall be such as prescribed by the board of education; the schools of the district shall be subject to such grading as the board may direct; the said high school shall be open to all pupils in the district, but no pupil shall be entitled to enter it until the principal of the schools within the district shall have satisfied himself that the said pupil has made due proficiency in the branches in the other schools of the district.

Sec. 6. Admission to the various schools in the district shall be gratuitous to all white children, wards and apprentices, or actual residents within the district between the ages of six and twenty-one years; *provided*, that the admission of pupils, who are non-residents of the district, may be allowed to attend the schools of the district upon payment in advance of such tuition as the board education may prescribe.

Sec. 7. The sheriff, in the collection and disbursements of the funds raised by the said district for school purposes, shall receive the same commissions, make the same settlements and require the same vouchers in making disbursements of funds, as required by the general law in dealing with other boards of education in the same matter.

Sec. 8. Annually, on the first Monday of July, or as soon thereafter as circumstances will allow, the board shall appoint a principal of the schools for the district, and fix his salary for the school term. And such principal, in addition to his general supervision over the schools of the district, shall perform such other duties as required by this act; he shall be liable to removal by the board for any of the causes and in the same manner as provided by general law for the removal of teachers employed to teach in the public schools of this state; and in the event of his removal the board shall fill the vacancy for the unexpired term. It shall be the duty of the principal to make such report to the board of education, of the character and condition of the schools of the district, as shall enable the secretary to make his required report to the county superintendent. The principal shall not receive directly or indirectly any gift, emolument or reward for his influence in recommending the use of any book, apparatus or furniture of any kind whatever in

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the schools of the district. For any violation of this provision he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars (\$25.00), nor more than one hundred dollars (\$100.00).

Sec. 9. On the first Monday in August, or as soon thereafter as practicable in each year, the said board of education shall meet and employ the necessary number of teachers for the different schools and rooms in the district, including an assistant principal, which assistant principal shall aid the principal in his duties; and the board of education of said district shall fix the salaries to be paid the principal, assistant principal and other teachers necessary to be employed in said school, at its first meeting in July, of each year; and all the teachers employed may be removed by the board for the same cause and in the same manner as provided for removal of teachers by general law. All appointment of teachers shall be in writing, at a meeting of said board, and each member of the board shall have notice of such meeting, and filed with ~~the~~ **secretary**.

Sec. 10. It shall be the duty of the board of education to provide by purchase, condemnation, leasing, building or otherwise, school houses and grounds, furniture, fixtures and appendages, and keep the same in good order and repair, and to supply the school houses with fuel, lights and other things necessary for their comfort and convenience; to pay the principal and interest on any bonds issued under the provision of this act, and all other necessary expense incurred in the district in connection with the schools not chargeable to teachers' fund. For the purposes mentioned in this section, the board of education shall annually levy a tax on the property taxable in said district, not to exceed in any one year the amount provided by general law; the proceeds of the taxes so levied, of the school houses and sites sold, of all donations, devises and bequests applicable to the purposes mentioned in this section, shall constitute a special fund to be called the "building fund," to be appropriated expressly for the purposes named in this section.

Sec. 11. In addition to the levy named in the preceding section, the board of education shall, for the purposes of the schools of the district, annually levy such tax on the taxable property of the district, as will from the money received from the state for the support of free schools, be sufficient to keep the schools in operation not less than nine months in the year; *provided*, that the said tax shall not exceed in any one year the rate of twenty-five cents on

each hundred dollars valuation according to the latest available assessment for county and state purposes; *provided, further*, that a special levy may be laid as provided by general law; the proceeds of these levies, together with the money received from the state as aforesaid, shall constitute a special fund to be called the "teachers' fund," and no part thereof shall be used for any other purpose than the payment of teachers' salaries, and the salary of the principal and assistant principal.

Sec. 12. The assessment made under the provisions of this act shall be collected as now provided by law. The board of education shall not during any year, incur any expense that shall exceed the amount of the available funds received for school purposes during the year.

Sec. 13. The election to be held on the question of the establishment of the independent school district of Logan shall be by ballot, and those voting in favor of the independent district, shall have written or printed on their tickets the words "for independent district," and those voting against the independent district shall have written or printed in their tickets "against independent district." The election shall be superintended, conducted and the results thereof ascertained and declared by the officers hereinbefore provided for, and after notice published for two successive weeks in at least two newspapers published in the district, next prior to the time of holding said election, and such notice to be published by the secretary of the board of education of Logan district. All elections held in pursuance of this act shall be held in compliance with the general election laws of this state except as herein otherwise provided.

Sec. 14. The compensation of the members of the said board of education shall not exceed two dollars per day per member for the time actually engaged in performing the duties required of them, and no member to receive more than twenty dollars (\$20.00) in any one year.

Any vacancy that may occur in the office of school commissioner by death, resignation or from any cause, shall be filled by the board of education of the district at their first regular meeting thereafter, or as soon as circumstances will permit, by the appointment of a suitable person, who shall hold his office until the next election of school commissioners or members of the board of education, when a member of said board of education shall be elected to fill the unexpired term.

Sec. 15. The president shall have one vote as a member of said board and shall not vote on any question arising in the board more than once by reason of being the presiding officer; the president and other members of the board of education and the secretary shall, before entering upon the discharge of their duties required of them, take the oath of office required to be taken by presidents, members and secretaries of boards of education in said county; the secretary shall record in a book provided for the purpose, all the official acts and proceedings of the board, which shall be a public record, open to the inspection of all persons interested therein, and shall perform all such other duties which are not inconsistent with this act, which are required of secretaries of the several boards of education in the county, and for his services as such secretary the board shall fix his salary as hereinbefore provided.

Sec. 16. The board of education shall hold stated meetings at such times and places as they may appoint, not less than two members being required to constitute a quorum for the transaction of business; special meetings may be called by the president when he shall deem it necessary, or at the request of the other two members, by the secretary, but no special meeting shall be held unless all the members have notice of the time and place of holding same. The concurrence of two members of the board shall be required to elect teachers and to decide all questions involving expenditures of public money, or for any other business whatever.

Sec. 17. The board of education of the independent school district of Logan shall be a body corporate, and as such may purchase, hold and grant estate, real and personal, contract, sue and be sued, plead and be impleaded; may receive any gift, grant, donation or devise and do other corporate acts; they shall have the management and be vested with the title of all real and personal estate for the use of the public schools within the district, and shall manage and dispose of the same as will in their opinion best subserve the interest of the district.

Sec. 18. The board of education shall establish within the district, one or more separate schools for colored children whenever they deem it necessary, so as to afford them as far as practical, the advantages and privileges of a free school education.

Sec. 19. All provisions of the general school law of this state and all laws and acts heretofore existing which are in any manner inconsistent with this act shall be void within the district; other-

wise the said general school laws shall remain in full force and effect therein.

(Senate Bill No. 203.)

## CHAPTER 18.

AN ACT to amend and re-enact section one of chapter two hundred and sixteen of the acts of the legislature of West Virginia for one thousand eight hundred and seventy-two and one thousand eight hundred and seventy-three, entitled "An Act relating to the school district of Martinsburg, West Virginia," as amended and re-enacted by section one of chapter nineteen of the acts of the legislature of West Virginia for one thousand nine hundred and seven, and for the additional purposes set out in the title thereof.

(Passed February 20, 1909. In effect from passage. Approved by the Governor February 26, 1909.)

Sec.

1. Independent school district of the city of Martinsburg; boundary enlarged.
2. Question of enlargement of district to be submitted to voters; spe-

Sec.

- cial elections.
3. Form of ballot; conducting election; result.
4. Inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That the boundaries of the independent school district of the city of Martinsburg shall be enlarged so as to include all the territory embraced in the corporate limits of said city as provided in an act of the legislature of West Virginia passed on the twenty-second day of January, one thousand nine hundred and nine, amending and re-enacting the several acts and parts of acts of the legislature of West Virginia theretofore passed relating to the charter of said city of Martinsburg, the changing of the corporate limits of said city, the addition of territory thereto, and the consolidation into one act of the whole charter of said city. The territory included within such boundaries shall constitute but one school district and shall be known as "The Independent School District of the City of Martinsburg."

Sec. 2. *Provided, however,* that before this act shall take effect as to the territory proposed to be included in said independent



school district from the district of Martinsburg, it shall be submitted to the voters of the school district of Martinsburg at a special election to be held in said district under the direction of the board of education thereof not later than the first Monday in July, one thousand nine hundred and nine; and before the same shall take effect as to the territory proposed to be included in the said independent school district from the district of Hedgesville, it shall be submitted to the voters of the said school district of Hedgesville at a special election to be held in said district under the direction of the board of education thereof not later than the first Monday in July, one thousand nine hundred and nine; and before the same shall take effect as to the territory proposed to be included in said independent school district from the district of Opequon, it shall be submitted to the voters of the school district of Opequon at a special election to be held therein, under the direction of the board of education thereof, not later than the first Monday in July, one thousand nine hundred and nine; and before the same shall take effect as to the territory proposed to be included in said independent school district from the district of Arden, it shall be submitted to the voters of the school district of Arden at a special election to be held therein, under the direction of the board of education thereof, not later than the first Monday in July, one thousand nine hundred and nine.

Sec. 3. The tickets for the said elections herein provided for shall have written or printed thereon "For Independent School District" and "Against Independent School District." The said election shall be held and conducted and the result thereof, in each of said districts, ascertained by officers to be appointed for the purpose in each of said districts by the boards of education thereof, respectively, and if the majority of the votes cast upon said question shall be in favor of said independent school district in either of the districts aforesaid, then so much of said territory included within the city of Martinsburg according to the boundaries thereof prescribed in its said amended charter as lies within the districts or either of them so voting in favor of the independent school district, shall thereafter be included within the independent school district of the city of Martinsburg.

Sec. 4. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

(Senate Bill No. 20.)

## CHAPTER 19.

AN ACT to amend and re-enact sections nine and ten of an act entitled "An Act providing for the School District of Salem, in Harrison County," as amended and re-enacted by chapter eighty-seven of the acts of one thousand eight hundred and ninety-seven.

(Passed February 9, 1909. In effect from passage. Approved by the Governor February 15, 1909.)

Sec. 9. Annual elections; how held; whom elected; term of office; organization of board.	Sec. 10. Election of treasurer; powers and duties; salary.
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*Be it enacted by the Legislature of West Virginia:*

That the ninth and tenth sections of an act providing for the school district of Salem, in Harrison county, passed February eighteenth, one thousand eight hundred and seventy-one, as amended by chapter eighty-seven of the acts of one thousand eight hundred and ninety-seven, are hereby amended and re-enacted so as to read as follows:

Sec. 9. Annual elections shall be conducted in all respects as provided in the general election laws, and be held at the same time and place as the elections of officers of the city of Salem, and be conducted by the same officers that conduct said city elections.

For the voters of the school district who live out of the said city, the clerks of election shall erase from a sufficient number of ballots the names of all candidates for city offices. One school commissioner shall be elected at the said city election on the first Tuesday of April, one thousand nine hundred and nine, and one annually thereafter. Their term of office shall be three years, and the term of each commissioner shall begin upon the first day of July following his election. Annually on the first Monday in July, or as soon thereafter as practicable, the board shall organize by electing one of their number president, and shall appoint a secretary who shall perform all the duties of secretary, as prescribed by the general school law.

Sec. 10. At the election in April, one thousand nine hundred and ten, and each fourth year thereafter, there shall be elected a

treasurer, whose term of office shall begin on the first day of July next succeeding his election. He shall give bond in favor of the school district of Salem, and the amount of such bond shall be determined by the board, and the bond shall be approved by the board and filed in their office.

The treasurer shall receive the tuition bills for students who are not entitled to free tuition under the general school law, and all moneys and subscriptions payable to the district by virtue of the third section of this act, and he shall pay out of the same upon the order of the board, but he may retain for his services five per centum of all moneys collected by him.

(House Bill No. 224.)

## CHAPTER 20.

AN ACT authorizing the directors of the Tyler county high school to issue orders for the purpose of paying any indebtedness existing against it on account of building said high school building and for the purpose of completing the same, laying walks and grading ground and the completion of the term of school.

(Passed February 20, 1909. In effect from passage. Became a law without the approval of the governor.)

Sec.

1. Empowering board of directors of high school to issue interest bearing orders to pay indebtedness; limiting amount of orders.

Sec.

2. Laying levy to pay indebtedness evidenced by orders; inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That the board of directors of the Tyler county high school is hereby empowered to issue orders for the purpose of paying any indebtedness existing against said board on account of the construction, equipment and furnishing of said building and for the purpose of completing the same and the term of school, grading grounds and laying sidewalks. Said orders shall draw interest at the rate of six per cent per annum, and the interest shall be paid annually, but the entire amount of the orders authorized to be issued under the provisions of this act shall not exceed fifteen thousand dollars.

Sec. 2. The said board is hereby authorized to lay a levy, in addition to the levy authorized by law for the purpose of maintaining the said school and at the same time the levy is laid for maintaining the said school, sufficient to pay the said indebtedness evidenced by the said orders. Said levy shall be known as special debt levy, and the board may lay a sufficient amount in one year to pay the entire indebtedness or it may make the rate of such amount as to pay the said indebtedness in one or two years. When all the indebtedness is paid with the accrued interest thereon as represented by the said orders, the authority of the board to lay such special debt levy shall cease.

All acts and parts of acts not consistent herewith are hereby repealed.

(House Bill No. 77.)

## CHAPTER 21.

AN ACT to amend and re-enact chapter twenty-seven, section one hundred and seventy-three, of the acts of one thousand nine hundred and eight, relating to the appointment and term of service of cadets in the West Virginia university.

(Passed February 6, 1909. In effect ninety days from passage. Approved by the Governor February 15, 1909.)

<p>Sec. 173. Admission of cadets to military department; by whom; number; by whom appointed; time of appointment; vacancy; how filled; minimum and maximum</p>	<p>Sec. age; term of service; right to re-enlist; number entitled to appointment from each senatorial district; from each county.</p>
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*Be it enacted by the Legislature of West Virginia:*

That chapter twenty-seven, section one hundred and seventy-three of the acts of one thousand nine hundred and eight be amended and re-enacted so as to read as follows:

Sec. 173. Besides prescribing the general terms upon which students may be admitted to the university, the regents may admit, as regular students therein, not more than two hundred and twenty-five cadets in the military department. Each member of the senate shall be entitled to appoint one cadet from his district, on or before the first day of June in the second year of his term, and one

cadet on or before the first day of June in the fourth year of his term. Each member of the house of delegates shall be entitled to appoint one cadet from his county on or before the first day of June next preceding the end of his term. In case the cadetship filled by appointment by any member of the legislature shall become vacant, the member making the appointment, or his successor, shall fill the same by a new appointment within the limit of time aforesaid. But no senator or delegate shall appoint any cadet until he receives a certificate from the president of the university or the commandant of cadets, giving him notice of his right to do so; and he shall not have the right to exercise such power of appointment so long as two cadets are accredited to him and his predecessor, either by original appointment or by re-enlistment. All other cadets necessary to make up the full complement of the corps, shall be appointed by regents, including vacancies, if any, caused by the failure of any member of the legislature to make his appointment. Cadets shall not be under sixteen years of age and shall not be over twenty-two years of age. Their appointment shall be made upon undoubted evidence of good moral character and sound physical condition. Their term of service shall be four years, but any cadet, at the expiration of his first term shall be entitled to re-enlist for the further term of two years, upon giving notice of his intention to the commandant of cadets, at least thirty days before the expiration of such term. But not more than fifteen cadets shall be appointed from any senatorial district, and not more than eight from one county.

(Senate Bill No. 206.)

## CHAPTER 22.

AN ACT to amend serial section one thousand seven hundred and one of the code of one thousand nine hundred and six, being section eighty-six of chapter forty-five, relating to the investment of the endowment fund of the university.

(Passed February 26, 1909. In effect ninety days from passage. Approved by the Governor February 27, 1909.)

Sec.

1. How endowment fund of the university shall be invested.

*Be it enacted by the Legislature of West Virginia:*

That serial section one thousand seven hundred and one of the code, being section eighty-six of chapter forty-five, be amended and re-enacted to read as follows:

Sec. 86. The funds derived from the sale of United States land warrants which have been donated to this state for the purpose of endowing an agricultural college shall be invested by the board of the school fund in a loan of public stock of the United States or otherwise, as required by congress, for the use and benefit of the said university.

(Senate Bill No. 1.)

## CHAPTER 23.

AN ACT to create a state school book commission and to procure for use in the public schools of the state a uniform series of text-books; to define the duties and powers of said commission; to make an appropriation for carrying into effect this act, and to provide penalties for the violation of the same.

(Passed February 22, 1909. In effect ninety days from passage. Approved by the Governor, February 26, 1909.)

Sec.

1. Composition of commission, manner of appointment and term of service; compensation.
2. Contracts for text books.
3. Meetings of commission; proposals for text books.
4. Manner of selecting books; execution of contracts.
5. Contractor's bonds.
6. Sale prices of books.

Sec.

7. Exchange of books; penalties; exceptions.
8. Uniform prices; cancellation of contracts.
9. Printed lists of book titles.
10. Unauthorized books; penalties.
11. State not liable for pay of contractors.
12. Pay of commission.
13. Gifts and bribes; penalties.
14. Inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. There is hereby created a state school book commission, which shall consist of the state superintendent of free schools, who shall be *ex officio* secretary, and eight citizens of the state, at least five of whom shall be experienced educators of known character and ability, and who are at the time of their appointment engaged in actual educational work, not more than five of whom shall belong to the same political party, who shall be appointed by the governor on or before the first day of April, one thousand nine hundred and twelve, and every fifth year thereafter; said appointees shall take office thirty days after their appointments and

serve for five years, unless removed by the governor for good and sufficient cause. Vacancies on said commission shall be filled by the governor by appointment. Said appointees shall receive five dollars per day for each and every day actually engaged in the work of the commission, not exceeding ten days in any one year, and their actual necessary expenses in connection therewith. Before assuming the duties of office they shall each take an oath or affirmation before some one qualified by law to administer the same, to faithfully and honestly perform their duties as hereinafter prescribed to the best of their ability, and that they are in no way interested in the preparation, manufacture or sale of any text-books that may be submitted to said commission for consideration. Such oath or affirmation shall be filed in the office of the state superintendent of free schools.

Sec. 2. It shall be the duty of the state superintendent of free schools during the month of April, one thousand nine hundred and eleven, to contract for the period of one year from July first following, with the publishers thereof, for such text-books as are now in use, and for which county contracts will expire June thirtieth, one thousand nine hundred and eleven; said contracts to be made upon the same terms and conditions as are contained in the existing county contracts.

Sec. 3. The members of the state school book commission shall meet at the office of the state superintendent of free schools on the first Tuesday in May, one thousand nine hundred and twelve, and each fifth year thereafter, at which time they shall ask various publishers of text-books in the United States to submit samples and prices of text-books on all subjects required to be taught in the free schools of the state, viz: spelling, reading, writing, arithmetic, language and grammar, physiology and hygiene, civil government, state history, United States history, general history, book-keeping, geography, elementary algebra, plane geometry, elements of agriculture, literature, drawing and English dictionaries and such other subjects which from time to time in the judgment of the board seems necessary and best to serve the educational interests of the state. The said commission shall select one of its members as chairman, and it shall be his duty to preside at all meetings. All bids or proposals shall be under seal, and submitted to the chairman of said commission to be opened by him in the presence of said commission at an executive session to be held at the place aforesaid, on the first Tuesday in June following. Each bid or proposal

shall be accompanied by a sufficient number of specimen copies of all books offered for adoption, to supply each member of said commission. When said bids and sample copies are submitted to the chairman of said commission, each bidder shall deposit with the state treasurer such sum of money as said commission shall designate; such deposit to be not less than one thousand dollars nor more than three thousand dollars, according to the number of books each bidder may propose to supply. Such deposit of any bidder shall be forfeited to the school fund of the state, if such bidder shall fail or refuse to make and execute such contract and bond as are hereinafter required, in case of the acceptance of such bid on any or all of the books so offered. No bid or proposal is to be considered by said commission until such deposit is made, and until the commission is informed in writing of the name and address of an agent residing in this state upon whom process may be served in any action brought against such bidder.

Sec. 4. Upon the opening of said bids on the first Tuesday in June the said commission, having adopted rules governing its order of procedure, shall immediately proceed to the consideration of the merits of the books offered, taking into consideration their subject matter, printing, binding and their general suitability for the purpose intended, as well as the price of said books. Said commission shall select and adopt one book, or one series of books, and only one, on each subject mentioned in section three of this act, for uniform and exclusive use in the free schools of this state, except as hereinafter provided, taking only those which in their best judgment will come the nearest accomplishing the ends desired; *provided*, that no book inferior in quality, or of a partisan or sectarian nature shall be adopted, nor shall any book be adopted by less than five affirmative votes; nor shall any book or books be changed at the expiration of any five-year contract made by said commission upon fewer than six affirmative votes. When selections and adoptions of books have been properly made, it shall be the duty of the chairman of the state school book commission to execute contracts therefor with the publishers thereof for a period of five years, beginning July first, following. Such contracts shall be prepared by the attorney general in accordance with the terms and provisions of this act, and shall be executed in duplicate, one copy held by the contractors and one by the secretary of said commission. It shall be the duty of said secretary to keep a full and complete record of the proceedings of the said commis-



sion, said record to be kept in his office and be open to the inspection of any citizen of the state. Should any successful bidder fail to contract, or, if for any cause any book or books adopted cannot be secured, the commission shall proceed at once to the selection and adoption of other books in lieu thereof.

Sec. 5. At the time of the execution of the contract aforesaid the contractors shall enter into a bond in the sum of not less than ten thousand dollars, payable to the state of West Virginia, conditioned on the faithful and honest performance of their contract; any guaranty company authorized to do business in the state of West Virginia may become surety on said bond, and it shall be the duty of the attorney general to prepare and the board of public works to approve said bond. After all contracts have been executed as herein provided, it shall be the duty of the said commission to notify the state treasurer to return all bidders such cash deposits heretofore required as have not been forfeited in accordance with the provisions of this act, receiving therefor receipt in duplicate, one copy of which shall be filed with the state superintendent of free schools. Any deposit forfeited in accordance with the provisions of this act shall be placed to the credit of the school fund.

Sec. 6. It shall be the duty of the state school book commission at the last meeting aforesaid to fix the prices at which the various books adopted shall be sold to patrons, the excess of which above contract price representing the profit to the retailer; but in no case shall such profit exceed twenty per cent of the contract price. The state superintendent of free schools shall notify each county superintendent of the list of books adopted and the prices at which they are to be sold, and any person selling such books at a higher price than that fixed by the state school book commission shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten dollars nor more than fifty dollars. The books furnished during the contract period shall be equal in all respects to the sample copies furnished the said commission; and it shall be the duty of the state superintendent of free schools to carefully preserve in his office as the standard of quality, sample copies of all books contracted for.

Sec. 7. It shall be the duty of each contractor at his own expense to place with responsible dealers, in no fewer than three magisterial districts in each county, a sufficient quantity of books to supply the demand. He shall also arrange for the exchange of

books at such places, allowing pupils or boards of education not less than fifty per cent of the retail price of new books for the old books of like kind and grade displaced. The exchange privilege shall extend through one entire school year, and the dealer making the exchange shall be allowed by the contractors ten per cent of the cash proceeds of same. Any teacher permitting in his school the use of any unauthorized book shall be deprived of his salary during the period of such violation of this act. Nothing in this act is to be construed as preventing the use of supplementary readers; *provided*, they do not displace the adopted readers, nor the use of more advanced books in such schools as may be ready for the same. Boards of education in cities and independent districts containing thirty-five hundred population or more, may reserve the right to select their own text-books; but should they elect to use any of the books adopted by the state school book commission they shall purchase them upon the same terms as hereinbefore provided, and shall not change them out during the period such books are under contract.

Sec. 8. Should any contractor furnish the same books contracted for in this state, at lower prices to any other state, city or county in the United States than contract prices in this state, like conditions prevailing, the same reduction shall immediately be made in this state, and the state school book commission is directed to require compliance with this provision on penalty of cancellation of contract with such contractor.

Sec. 9. It shall be the duty of any contractor to prepare printed lists, showing the exact titles of his books, the prices at which same are to be sold by the dealers, and the prices of same when corresponding old books are given in exchange, and send to each county superintendent a sufficient number to supply every teacher in the county. It shall be the duty of each county superintendent to see that the teachers of his county display such printed list for the inspection of the pupils.

Sec. 10. Complaint in writing to any board of education of any district, by any citizen, or by any contractor to the effect that a teacher of such district is permitting the use of unauthorized books in his school, shall be deemed sufficient cause for investigation by said board of education, and if such complaint is found to be true, the board shall inflict the penalty provided in section seven of this act. Members of boards of education who fail or refuse to perform the duties required of them in this section shall be guilty of a

misdeemeanor, and upon conviction thereof before any justice of the peace, shall be fined not less than twenty-five dollars, nor more than fifty dollars.

Sec. 11. It shall be a part of the terms and conditions of any contract made in pursuance of this act that the state of West Virginia shall not be liable, in any manner, in any sum whatsoever; but all said contractors shall receive their pay solely from the several dealers in each of the counties of the state provided in section seven of this act. Such contract shall also provide that any pupil, parent or teacher may order books direct from the contractors and receive them prepaid at the prices fixed by the state school book commission for their sale by dealers in the several counties. *Provided, however,* that the pay for same shall accompany the order.

Sec. 12. The sum of one thousand dollars, or so much thereof as may be necessary, for the year one thousand nine hundred and twelve, and each fifth year thereafter is hereby appropriated for the purpose of defraying the expense of the state school book commission, as hereinbefore provided. The bills for such expenses shall be approved by said commission and presented in the usual way for payment out of the state treasury.

Sec. 13. Any member of the state school book commission who shall receive, solicit or accept any gift, present or thing of value to influence him in his vote for the adoption of books, or any person who shall either directly or indirectly give or offer to give any such gift, present or thing of value to any member of said state school book commission to influence him in voting for the adoption of books shall be guilty of a felony, and upon conviction thereof shall be punished by confinement in the penitentiary of this state not less than one year nor more than three years.

Sec. 14. All acts or parts of acts inconsistent with this act are hereby repealed; but nothing in this act contained shall be construed as repealing sections thirty-five and thirty-six of chapter twenty-seven of the acts of the legislature of West Virginia of the extra session of one thousand nine hundred and eight.

(House Bill No. 319.)

## CHAPTER 24.

AN ACT to amend and re-enact section forty-one of chapter forty-five of the code of West Virginia, as amended and re-enacted by the acts of the legislature of one thousand nine hundred and eight, relating to the auditor's report on the general school fund.

(Passed February 26, 1909. In effect ninety days from passage. Approved by the Governor February 27, 1909.)

Sec.

41. Auditor to ascertain apportionment of general school fund.

*Be it enacted by the Legislature of West Virginia:*

That section forty-one of chapter forty-five of the code of West Virginia be amended and re-enacted to read as follows:

Sec. 41. It shall be the duty of the auditor, on or before the twentieth day of July, in each year, to ascertain the amount of the general school fund which is distributed among the several counties as aforesaid, and notify the state superintendent of free schools thereof, who shall thereupon ascertain the proper share of each county and notify the auditor and each county superintendent of said apportionment.

(Senate Bill No. 133.)

## CHAPTER 25.

AN ACT to amend and re-enact sections eighty-one and eighty-two of chapter forty-five of the code of West Virginia as amended and re-enacted by the acts of the legislature of one thousand nine hundred and eight, relating to the examination of teachers.

(Passed February 26, 1909. In effect ninety days from passage. Approved by the Governor March 1, 1909.)

Sec.

81. Allowance to state superintendent for preparation and printing of questions, etc., with regard to teachers' examination.

Sec.

82. What applicants for teachers' certificates shall be examined in: special provisions.

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*Be it enacted by the Legislature of West Virginia:*

That sections eighty-one and eighty-two of chapter forty-five of the code of West Virginia be amended and re-enacted, to read as follows:

Sec. 81 For the preparation and printing of questions, the grading of manuscripts, the transmission of certificates and the additional clerical work demanded, the state superintendent of free schools shall be allowed an amount not to exceed six thousand dollars annually, which sum is hereby appropriated and set apart from the general school fund for this purpose.

Sec. 82. Applicants for teachers' certificates shall be required to pass an examination in orthography, reading, penmanship, arithmetic, English grammar and language, physiology and hygiene, United States history, state history, geography, civil government, agriculture, and theory and art of teaching; and applicants for certificates good in the advanced grades of graded schools or in high schools shall in addition to the foregoing be required to pass examinations in general history and single entry book-keeping. Applicants for high school and primary teachers' certificates shall pass an examination in such other branches as the state board of education may prescribe. Applicants having passed one examination may take a part of the branches, not exceeding one-half, in a second or third examination of the same year, upon payment of one-half the regular fee and the state superintendent may at his discretion allow such applicant the benefit of his highest grade in each branch, in making up his certificate.

(Senate Bill No. 127.)

## CHAPTER 26.

AN ACT to amend and re-enact section ninety-two, chapter twenty-seven of the acts of the extraordinary session of the legislature of West Virginia of one thousand nine hundred and eight, relating to the issuing of certificates.

(Passed February 9, 1909. In effect ninety days from passage. Approved by the Governor February 16, 1909.)

Sec.

92. Duplicate first grade certificates; to whom they may be issued.

*Be it enacted by the Legislature of West Virginia:*

That section ninety-two of chapter twenty-seven of the acts of the extraordinary session of the legislature of West Virginia of one thousand nine hundred and eight, be and is hereby amended and re-enacted, to read as follows:

*Certificates to Graduates.*

Sec. 92. The state superintendent of free schools shall issue first grade certificates in duplicate, upon application in due form, to graduates of the West Virginia university, who have taken at least six courses in education; to graduates of the normal department of the state normal school and its branches; to graduates of the normal departments in all other schools of the state, who have completed a normal course which in the judgment of the state board of education is equivalent in amount, kind and quality to that of the state normal school and its branches; and to graduates of the normal department of the West Virginia colored institute.

(House Bill No. 20.)

## CHAPTER 27.

AN ACT to create a court of limited jurisdiction for the trial of felonies, misdemeanors and offenses within and for the county of Harrison.

(Passed February 2, 1909. In effect ninety days from passage. Approved by the Governor February 8, 1909.)

Sec.

1. Court of limited jurisdiction established; name of court.

Sec.

2. Jurisdiction concurrent with circuit court; in what cases and proceedings.

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| <p>Sec.</p> <p>3 Election of judge; qualifications; term of office; appointment by governor.</p> <p>4. Salary of judge; by whom paid.</p> <p>5. What powers and jurisdiction conferred on court, etc.; power of judge in vacation as to felonies, etc.</p> <p>6. Facts authorizing jurisdiction need not be set forth upon record; jurisdiction presumed unless, etc.</p> <p>7. Powers to punish for contempt.</p> <p>8. Terms of court and when to begin; where held.</p> <p>9. Grand jury for each term; special grand juries; what offenses grand jury may consider; provisions of law applicable; how jurors chosen and empaneled; compensation.</p> <p>10. Clerk of criminal court, who to be; fees; to what statutes liable; to sign all processes, etc., and direct the same; who to execute such processes; additional compensation.</p> <p>11. Duties of sheriff of Harrison county and sheriffs of other counties as to processes of court; other duties and services to be performed by the sheriff of Harrison county; powers and rights of officers executing processes; additional compensation for sheriff.</p> <p>12. Indictments found or pending in circuit court may be certified to criminal court; recognizance in such cases.</p> <p>13. Change of venue.</p> <p>14. County court to provide record books, stationery and seal; faith and credit given to records of court and to certificates of judge or clerk.</p> <p>15. When judge cannot preside he may certify cause to circuit court; proceedings; recognizances in ballable cases; special judge</p> | <p>Sec.</p> <p>when; how selected; per diem and how paid.</p> <p>16. Appeals allowed to criminal court concurrent with circuit court, in what cases; provisions of law governing proceedings thereon.</p> <p>17. Appeal and writs of supersedeas; in what cases allowed or awarded by circuit court.</p> <p>18. Appeal, writ of error or supersedeas, how obtained; what law to govern proceedings; no appeal allowed in certain cases, unless, etc.</p> <p>19. Appeal, writ of error or supersedeas to be docketed in circuit court; how proceeded in.</p> <p>20. In case the circuit court deems the judgment, etc., plainly right and rejects the appeal, etc., on that ground, what then.</p> <p>21. Proceedings in circuit court on appeals, writs of error, etc., duty of clerk of court.</p> <p>22. Writ of habeas corpus, power to grant concurrent with that of supreme or circuit court; provisions of law governing.</p> <p>23. Prosecuting attorney or his assistant to attend terms of court; what duties to perform and for what compensation.</p> <p>24. Certain sections of chapter forty-one of the code made applicable.</p> <p>25. Court stenographer, appointment, duties and compensation of.</p> <p>26. No grand juries shall be impaneled in circuit court, unless, etc.</p> <p>27. If office of judge be contested, how heard and determined.</p> <p>28. Vacancy in office, how filled.</p> <p>29. Judge may be removed from office; reasons and manner.</p> <p>30. Chapter one hundred and fifty-six of the code made applicable.</p> <p>31. Chapter one hundred and fourteen of the code made applicable.</p> |
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*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That a court of limited jurisdiction is hereby established in and for the county of Harrison, to be held and presided over by a judge to be appointed or elected as provided by this act, which court shall be named and designated, "The Criminal Court of Harrison County."

Sec. 2. The said court shall have jurisdiction within the said county of Harrison concurrent with the circuit court of all felonies and misdemeanors committed within said county of Harrison. Said court shall also have jurisdiction concurrent with the circuit court of said county, and shall have the supervision and control of

criminal proceedings before justices of said county, the mayor of any incorporated city, town or village, or other police court of any incorporated city, town or village therein, by appeal, *mandamus*, prohibition and *certiorari*. It shall also have jurisdiction concurrent with said circuit court for the collection of all recognizances taken by said criminal court and for the collection of all bonds taken by said criminal court, or by the clerk thereof in vacation, to secure the payment of judgments for fines and costs rendered by said court, and for the collection of all recognizances and bonds taken by the justices of said county or the mayor of any incorporated city, town or village in said county in relation to criminal proceedings before said justices or mayor. The said court shall also have jurisdiction concurrent with the circuit court of said county for the maintenance of illegitimate children, as provided by chapter eighty of the code of West Virginia.

Sec. 3. There shall, at the general election to be held in this state on the Tuesday next after the first Monday in November, in the year one thousand nine hundred and twelve, and every four years thereafter, be elected by the legal voters of said county a judge of said criminal court, who shall be a resident member of the bar of said county, and shall be disqualified from practicing law in all of the courts of this state during his continuance in office; who shall preside over said court for the term of four years from the first day of January succeeding his election, and shall be, except as to his term of office and jurisdiction, subject to the laws in force governing circuit court judges. For the time intervening between the date this act takes effect and the election of a judge of said court, as herein provided, the governor of this state shall appoint and commission as judge of said criminal court a proper person who at the time of his appointment shall be a resident member of the bar of said county; and the judge so appointed shall hold said office until the general election in the year one thousand nine hundred and twelve, and until his successor is elected and qualified, and shall otherwise be subject to the provisions of this act applicable to a regularly elected judge of said criminal court.

Sec. 4. The judge of said criminal court shall receive for his services a salary of twenty-four hundred dollars per year; said amount to be fixed and paid from year to year by the county court of said county out of the funds of said county, as provided by statute.



Sec. 5. The powers and jurisdiction conferred upon the circuit courts in the trial of criminal cases and proceedings and modes of procedure authorized therein, within the county of Harrison, are hereby conferred upon, and shall be exercised by said criminal court of Harrison county. And the judge of said criminal court shall have the same powers in vacation as to felonies, misdemeanors and other offenses committed in the said county of Harrison that are conferred upon the judge of the circuit court of said county.

Sec. 6. It shall not be necessary for any cause or proceeding in said criminal court that the facts authorizing it to take jurisdiction of the case or proceeding shall be set forth upon the record, but jurisdiction shall be presumed unless the contrary plainly appears from the record.

Sec. 7. The said criminal court shall have the same powers to punish for contempt as are conferred upon the circuit court by law.

Sec. 8. There shall be three terms of said court in each year, commencing on the first Tuesday in March; the first Tuesday in June, and the second Tuesday in November. The terms of said court shall be held at the county seat of said county at the courthouse thereof.

Sec. 9. The said criminal court shall impanel a grand jury at each term thereof, and said court, or the judge thereof may, in his discretion, order a grand jury to be drawn or summoned to attend at any special or adjourned term of said court. Such grand jury may consider any offense against the laws committed within said county of Harrison, whether the same shall have been committed before the next preceding term of the court or not, and whether the accused shall have been held for trial or not, prior to the next preceding regular term, and all the provisions of chapter one hundred and fifty-seven of the code of West Virginia, in regard to grand juries in the circuit court, shall apply, so far as applicable, to the grand juries in said criminal court. The grand and petit juries serving in said court shall be chosen and impaneled in the same manner as they are chosen and impaneled by law in the circuit court, and shall receive the same compensation as said jurors in the circuit court.

Sec. 10. The clerk of the circuit court of Harrison county shall

be *ex officio* clerk of said criminal court and perform the duties thereof, and shall receive the same fees as are allowed by law, for similar services, to the clerk of the circuit court; and, in the discharge of his duties as clerk of the criminal court, he shall be subject to all statutes relating to the clerk of the circuit court. All process, rules and orders of said court in the exercise of its jurisdiction shall be signed by the clerk thereof, and be directed to the sheriffs of the proper counties, wherein the same are to be executed, and they shall be executed in like manner and with the same effect as process issuing from the circuit court of said county. And the county court of said county shall allow said clerk a compensation for his services of four hundred dollars per year in addition to the compensation that may be allowed the clerk of the circuit court of said county.

Sec. 11. The sheriff of Harrison county, and the sheriffs of the several counties in the state, shall, by themselves or their deputies, execute all processes of said court, or issued by the clerks thereof, directed to them respectively and all processes issued by the clerk thereof shall be directed to and executed by them in the same manner as is provided by law as processes issuing from the circuit court or the clerk thereof. And the sheriff of Harrison county shall perform the same duties and services for the criminal court of Harrison county, as he is now by law required to perform for the circuit court of said county. And in the execution of the processes, rules and orders of said court, said officers shall have the same powers and likewise be subject to the same liabilities, govern themselves by the same rules and principles of law and the statutes of the state, and be entitled to the same fees as though process issued from the circuit court of said county. And the county court of said county shall allow the sheriff of said county for his services hereunder an additional compensation of two hundred dollars per year.

Sec. 12. The circuit court of said county may in its discretion certify to said criminal court for trial all indictments and prosecutions for felonies, misdemeanors and offenses now pending in said circuit court or that may hereafter be found by the grand juries impaneled in said circuit court; and the said circuit court may in its discretion take proper recognizances from the defendant in bailable cases, and also from witnesses for the state, for their appearance before the said criminal court.

Sec. 13. A change of venue in any case pending in said court may be ordered as provided in chapter one hundred and fifty-nine of the code of West Virginia.

Sec. 14. It shall be the duty of the county court of Harrison county to provide all record books and other stationery that may be necessary for said criminal court, and likewise a seal for the said court; but full faith and credit shall be given to the record of said court and certificates of its judge and clerk whether the seal of the court be affixed thereto or not, in like manner, and with the same effect as if the same were records of the circuit court similarly authenticated.

Sec. 15. If the judge of said criminal court in his judgment cannot properly preside at the hearing of any case pending therein, said cause may be, in his discretion, certified to, and the original papers together with a copy of the orders of the court filed in the circuit court of said county, and the cause shall be docketed therein and proceeded with, as though the case had originally been brought and the prior proceedings had in the circuit court to which it was transferred. And the said criminal court may in its discretion take such recognizances from the defendants in bailable cases, and from the witnesses for the state, as he may deem proper, for their appearance before said court. Or when, for any cause the judge of said criminal court is incapable of acting, or is absent, a special judge may be elected in the same manner as a special judge of the circuit court, and governed in all respects, as far as applicable, as a special judge of the circuit court, and shall be allowed five dollars a day, to be paid out of the county treasury.

Sec. 16. Every person sentenced to imprisonment by the judgment of a justice, or the judgment of the mayor of any incorporated city, town or village, in said county, or to the payment of a fine of ten dollars or more, shall be allowed an appeal, as provided in section two hundred and thirty of chapter fifty of the code of West Virginia, to the criminal court of said county, concurrent with the circuit court of said county, and all the provisions of said section shall apply to said appeal and govern the proceedings thereon, and the same shall be proceeded in, heard and determined, and with like effect, as is provided in said section two hundred and thirty of chapter fifty of the code.

Sec. 17. Appeals may be allowed and writs of *supersedeas*

awarded to the judgments, rules and orders of said court by the circuit court of said county, or the judge thereof in vacation in cases involving the freedom of a person, or the constitutionality of a law, and when judgment is rendered against a defendant in case of felony or misdemeanor. And in cases relating to the public revenue, the right of appeal shall belong to the state as well as to the defendant.

Sec. 18. Any person who is a party to any such controversy wishing to obtain an appeal, writ of error or *supersedeas*, in the cases named in the seventeenth section of this act, may present to the circuit court of Harrison county, or the judge thereof in vacation, a petition therefor, and chapter one hundred and thirty-five of the code of West Virginia concerning appeals to the supreme court of appeals shall, so far as applicable, govern the proceedings on such appeal, writ of error or *supersedeas*, as to the duties of the petitioner, the said court and the clerk thereof; *provided, however*, no such appeal, writ of error or *supersedeas* to said court shall be allowed unless the petition therefor be presented in six months from the date of such judgment or order.

Sec. 19. Every appeal, writ of error or *supersedeas* from said criminal court shall be docketed in the circuit court of said county, and shall be proceeded with in the same manner as appeals, writs of error or *supersedeas* are proceeded in when heard and determined in the supreme court of appeals.

Sec. 20. In a case where an appeal, writ of error or *supersedeas* is to the circuit court, if the court or judge thereof deems the order or judgment plainly right and rejects it on this ground, if the order of rejection so state, no further petition shall afterwards be presented for the same purpose; but the petition and the order of rejection with the transcript of the record may be presented to the supreme court of appeals, or the judge thereof in vacation, for an appeal, writ of error or *supersedeas* from said order of rejection. And, if allowed, the same proceeding may be had thereon as if the same were a petition originally from the circuit court of said county to the supreme court of appeals.

Sec. 21. The said circuit court, where an appeal, writ of error or *supersedeas* has been allowed by the said court or the judge thereof in vacation shall, upon the hearing thereof, affirm said judgment or order if there be no error therein prejudicial to the appellant, or reverse the same in whole or in part if erroneous,

and the circuit court may retain the case for trial or remand the same back to said criminal court to be further proceeded in and finally determined. And the clerk of said circuit court shall, as soon as practicable, transmit the decision of said circuit court to the clerk of said criminal court.

Sec. 22. The eriminal court of Harrison county and the judge thereof in vacation shall, concurrent with the supreme court of appeals or the circuit court of said county, or any judge of any circuit court in vacation, grant the writ of *habeas corpus ad subjiciendum* as provided in chapter one hundred and eleven of the code of West Virginia. And all provisions of said chapter shall be applicable thereto. And the same shall be governed as therein provided. But in no case shall the same be issued by the said criminal court or the judge thereof in vacation on the application of any person unless he shall by himself, or by some one in his behalf, apply for the same by petition showing by affidavit or other evidence probable cause to believe that he is detained in the county of Harrison without lawful authority.

Sec. 23. The prosecuting attorney of Harrison county shall attend the terms of said criminal court either by himself or his assistant, and shall perform the duties of his office as required by section six of chapter one hundred and twenty of the code, and for the compensation therein stated and provided, and in addition thereto the county court of said county shall allow the said prosecuting attorney four hundred dollars per year, in addition to the amount allowed by law to the said prosecuting attorney.

Sec. 24. Sections forty-one, forty-two and forty-three of chapter forty-one of the code of West Virginia shall apply to the criminal court of Harrison county and the judge thereof in the same manner and to the same extent as they do to the circuit court of Harrison county and the judge thereof.

Sec. 25. The judge of said criminal court shall appoint a court stenographer for said court, who shall attend the terms of said criminal court and take the evidence and transcribe the same when required so to do. And for his services he shall receive the same compensation and be paid in the same manner as stenographers in the circuit courts of this state are paid.

Sec. 26. From and after the first term of said criminal court held under this act, no grand juries shall be impaneled in the

circuit court, unless the judge of said circuit court directs a grand jury to be summoned and impaneled at a regular or special term of said court or by order entered of record.

Sec. 27. If the office of judge of said criminal court be contested the said contest shall be heard and determined in the same manner as the election of judges of the circuit courts are determined.

Sec. 28. If from any cause the office of judge of said criminal court shall become vacant, the vacancy shall be filled in the same manner as in the case of a vacancy in the office of judge of the circuit court.

Sec. 29. The judge of said criminal court may be removed from office for the same reasons and in the same manner as judges of the circuit courts.

Sec. 30. Chapter one hundred and fifty-six of the code of West Virginia shall apply to the criminal court of Harrison county and to the judge thereof in vacation, in the same manner and to the same extent that it does to the circuit court of Harrison county, or to the judge thereof in vacation, and the same powers may be exercised within the county of Harrison by said criminal court, and the judge thereof in vacation, concurrent with the circuit court of said county, as provided for in said chapter. All examinations, recognizances, warrants of commitment and certificates of other proceedings, made returnable to the circuit court of Harrison county, under the provisions of said chapter one hundred and fifty-six, may be made returnable likewise to said criminal court of Harrison county, concurrent with the circuit court of said county.

Sec. 31. Chapter one hundred and fourteen of the code of West Virginia shall apply to the criminal court of Harrison county, in the same manner and to the same extent that it does to the circuit courts of the state.

(Senate Bill No. 215.)

## CHAPTER 8.

AN ACT to amend and re-enact sections two and nine of chapter eight of the acts of the legislature of West Virginia passed February twelfth, one thousand eight hundred and ninety, entitled "An Act establishing a criminal court for the county of Kanawha as amended and re-enacted by chapter eighty-seven of the acts of the legislature of one thousand nine hundred and five as amended and re-enacted by chapter twenty-five of the acts of the legislature of one thousand nine hundred and seven, and changing the name of said court."

(Passed February 26, 1909. In effect ninety days from passage. Became a law without the approval of the Governor.)

Sec.

2. Jurisdiction concurrent with circuit court; all law matters under \$500.00; appeals from justices, etc.; mandamus, prohibition

Sec.

and certiorari.  
9. Compensation of judge and how paid.

*Be it enacted by the Legislature of West Virginia:*

That sections two and nine of chapter eight of the acts of the legislature of one thousand eight hundred and ninety, passed February twelfth, one thousand eight hundred and ninety, entitled "An Act establishing a criminal court for the county of Kanawha as amended and re-enacted by chapter eighty-seven of the acts of the legislature of one thousand nine hundred and five as amended and re-enacted by chapter twenty-five of the acts of the legislature of one thousand nine hundred and seven, and changing the name of said court," be amended and re-enacted so as to read as follows:

Sec. 2. The said court shall have jurisdiction within the county of Kanawha concurrent with the circuit court of said county, of all felonies, misdemeanors, and offenses committed within the said county; and also of all matters at law where the amount in controversy, exclusive of interest and costs, does not exceed five hundred dollars. And also of appeals from the judgments of the justices of said county when such appeals shall lie to said court in the same manner and under the same regulations, as provided in the general law for appeals from justices; also for the trial of all cases concurrent with the circuit court, for the maintenance of illegitimate children, as provided by chapter eighty of the code

of West Virginia. And the court shall also have jurisdiction concurrent with the circuit court of said county as to the supervision and control of all proceedings before justices of said county, or the mayor or police judge or police court of any incorporated city, town or village of said county, by appeals, *mandamus*, prohibition and *certiorari*. Said court shall also have jurisdiction concurrent with said circuit court, of appeals from the police judge or the police court of the city of Charleston in said county.

Sec. 9. The said judge shall for his services receive forty-five hundred dollars per annum, to be paid out of the county treasury of said Kanawha county.

(House Bill No. 339.)

## CHAPTER 29.

AN ACT to amend and re-enact sections five and seven of an act entitled "An Act to establish a county court and a board of commissioners for the county of Ohio, under the thirty-fourth section of the eighth article of the constitution of the state of West Virginia," approved December twenty-first, one thousand eight hundred and seventy-two.

(Passed February 25, 1909. In effect ninety days from passage. Approved by the Governor February 27, 1909.)

Sec.

5. Territorial division of Ohio county; sub-districts; district officers; term of office; election of board of county commissioners; terms of office.

Sec.

7. Board of commissioners; powers and duties; regular and special meetings; president and clerk; salaries; vacancy in office; how filled.

*Be it enacted by the Legislature of West Virginia:*

That sections five and seven of an act to establish a county court and a board of commissioners for the county of Ohio, under the thirty-fourth section of the eighth article of the constitution of the state of West Virginia, approved December twenty-first, one thousand eight hundred and seventy-two, be amended and re-enacted so as to read as follows:

Sec. 5. The said county shall be laid off into not less than three nor more than ten districts, as nearly equal as may be in territory and population. The present sub-divisions of the county by dis-



tricts shall constitute such districts until changed by the board of commissioners hereinafter mentioned. In each district there shall be elected by the voters thereof two justices of the peace and two constables who shall reside in their respective districts and shall hold their respective offices for the term of four years.

There shall be elected at the general election to be held on the Tuesday next after the first Monday in November, one thousand nine hundred and ten, by the qualified voters of the county of Ohio, a board of county commissioners, consisting of three members, one of these three members shall be a resident of that part of Ohio county outside of the city of Wheeling, one of that part of the city of Wheeling south of Wheeling creek, and one of that part of the city of Wheeling, north of Wheeling creek including Wheeling island. They shall hold their office for the terms of two, four and six years respectively. The one receiving the highest number of votes shall hold his office for six years, the one receiving the next highest number of votes for four years, and the one receiving the third highest number, for two years. The term of said members shall begin with the first day of January, one thousand nine hundred and eleven, and at the general election on the Tuesday next after the first Monday in November, one thousand nine hundred and twelve, and biennially thereafter, there shall be elected by the qualified voters of Ohio county a member of said board for the term of six years; *provided, however*, that at no time there shall be more than one member from any one of the three sub-divisions of the county above named.

The offices of justices of the peace and commissioners shall be considered incompatible.

Sec. 7. The commissioners elected as provided in section five shall constitute a board, to be known as "The Board of Commissioners of the County of Ohio," by which name they may sue and be sued, and make and use a common seal, and enact ordinances and by-laws not inconsistent with the laws of this state. They shall meet steadily on the first Mondays in every month, at the court house of their county, and may hold special and adjourned meetings at any time after their first meeting after election. They shall elect one of their number president of the board, and appoint a clerk, who shall hold his office at their pleasure, and shall keep a journal of their proceedings, including a record of their ordinances in a volume separate from the journal of their proceedings, and shall perform such other services pertaining to

his office as may be by them or by law required; and whose compensation they shall fix by ordinance and pay from the county treasury. The said board shall have the same powers now vested in the board of commissioners of Ohio county as to the superintendence and administration of the internal police and fiscal affairs of the county, including the establishment and regulation of roads, ways, bridges, public landings, ferries and mills, the granting of ordinary and other licenses, with authority to lay and disburse the county levies. The board shall, in all contested cases, judge of the election, qualification and returns of its own members, and of all county and district officers; and it shall exercise such other jurisdiction and perform such other duties as may be prescribed by law. The said commissioners shall each receive a compensation of five dollars per day for their services as commissioners, to be paid out of the county treasury. Any commissioner may be indicted for malfeasance, misfeasance or neglect of official duty, and, upon conviction thereof, his office shall become vacant. A vacancy in the board of commissioners, whether from resignation, removal from the sub-division from which he was elected, removal from office, death or other cause, shall be filled by the remaining members of the board.

(House Bill No. 134.)

## CHAPTER 30.

AN ACT to authorize the county court of any county having a population of fifty thousand people or more, to pay to the judge of the circuit court of said county and resident therein additional compensation.

(Passed February 22, 1909. In effect ninety days from passage. Approved by the Governor February 26, 1909.)

Sec.

1. Additional compensation for judges of circuit courts; how fixed.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That the county court of any county which had, at the last preceding census taken under the authority of the United States of America, a population of fifty thousand or more, or which

may have a population of fifty thousand or more, when such census is taken in the year one thousand nine hundred and ten, is hereby authorized to pay to the judge of the circuit court of said county, in addition to the amount allowed to such judge out of the state treasury, such sum of money as the county court of said county shall deem just and proper, not to exceed the sum of twelve hundred dollars per annum; but such allowance shall not be increased or diminished during the term of office of the judge to whom it may be made, except that it may be made to the judge of the circuit court of said county now in office, and the allowance herein authorized may commence as to the judge now in office, from the first day of January, one thousand nine hundred and nine, or if allowance is made, as determined by the census of one thousand nine hundred and ten, then such allowance may be made to commence from the first day of January, one thousand nine hundred and ten.

(Senate Bill No. 84.)

## CHAPTER 31.

AN ACT to amend and re-enact section fourteen of chapter eighteen of the acts of the legislature of West Virginia of one thousand eight hundred and ninety three, concerning the duties of the county court of Mercer county, West Virginia, in respect to the criminal court of said county.

(Passed February 26, 1909. In effect ninety days from passage. . Approved by the Governor March 1, 1909.)

Sec. 14. Providing office, record books, etc. for judge of criminal court;		Sec. seal of the court.
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*Be it enacted by the Legislature of West Virginia:*

That chapter eighteen, section fourteen, of the acts of the legislature of West Virginia of one thousand eight hundred and ninety-three, be amended and re-enacted to read as follows:

Sec. 14. It shall be the duty of the county court of Mercer county, West Virginia, to provide an office for the judge of said criminal court, all record books, other books and stationery that may be necessary, and likewise a seal for said criminal court; but

full faith and credit shall be given to the record of said court, and the certificates of its judge, or clerk, whether the seal of the court be affixed thereto or not, in like manner and with the same effect as if the same were records of the circuit court similarly authenticated.

(House Bill No. 155.)

## CHAPTER 32.

AN ACT to amend and re-enact section forty-nine of chapter thirty-nine of the code of West Virginia, as amended and re-enacted by chapter twenty-four of the acts of one thousand nine hundred and three, concerning allowances to county officers in the state of West Virginia.

(Passed February 25, 1909. In effect ninety days from passage. Became a law without the approval of the Governor.)

<p>Sec. 49. Annual allowance to county officers; no extra compensation after work performed or contract made; salary not to be in-</p>		<p>Sec. increased or diminished during term of office; duty of prosecuting attorney.</p>
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*Be it enacted by the Legislature of West Virginia:*

That section forty-nine of chapter thirty-nine of the code of West Virginia of one thousand eight hundred and ninety-nine, as amended and re-enacted by chapter twenty-four of the acts of one thousand nine hundred and three, be amended and re-enacted so as to read as follows:

Sec. 49. The county court of every county shall allow annually to the county officers, hereinafter mentioned, for their public services, for which no other fee or reward is allowed by law, such sums to be paid out of the county treasury as are deemed reasonable by the court, within the limits ascertained by law, that is to say:

To the sheriff not to exceed two hundred dollars, except that the sheriff of Doddridge, Grant, Mineral, Hardy, Pendleton, Jackson, Logan, Monongalia, Monroe, Morgan, Putnam, Preston, Randolph, Ritchie, Raleigh, Summers, Taylor, Tyler, Tucker, Upshur and Webster counties shall be allowed a sum not to exceed three hundred dollars; Greenbrier, Hampshire, Wyoming, Lewis, Marshall, Mercer and Wetzel not less than three hundred dollars nor more

than six hundred dollars, and Pleasants and Mingo not to exceed four hundred and fifty dollars; and to the sheriffs of Harrison, Cabell, Lincoln, Marion, McDowell, Fayette, Braxton, Ohio, Kanawha and Wood counties a sum not to exceed five hundred dollars.

To the clerk of the circuit court not to exceed two hundred dollars, except that the clerk of the circuit court of Ohio, Kanawha, McDowell, Fayette, Harrison and Marion counties shall be allowed annually not less than two thousand nor more than three thousand dollars; to the clerk of the circuit court of Wood, Wetzel, Mercer, Cabell and Mingo counties, shall be allowed annually not less than one thousand nor more than two thousand dollars; and of Hampshire, Hardy, Grant, Pendleton and Pleasants counties, shall be allowed a sum not to exceed four hundred dollars; and the circuit clerk of Mineral, Monongalia, Preston, Pocahontas, Raleigh, Nicholas and Webster counties, not less than four hundred nor more than six hundred dollars; and the county of Roane not less than three nor more than six hundred dollars; and the counties of Summers, Calhoun, Gilmer, Logan, and Wirt not less than five hundred nor more than six hundred dollars; and the counties of Berkeley, Greenbrier, Jackson, Lincoln, Marshall, Mason, Putnam, Randolph, Tucker, Tyler, Upshur and Wayne not less than four hundred dollars each and not to exceed eight hundred dollars; and in the counties of Taylor and Jefferson not less than five hundred nor more than eight hundred dollars; and in the counties of Barbour, Lewis, Braxton and Clay, not less than six hundred nor more than eight hundred dollars; and in the county of Ritchie not less than seven hundred nor more than one thousand dollars; and in the county of Wyoming not less than three hundred nor more than six hundred dollars; and in the county of Doddridge not less than six hundred nor more than twelve hundred dollars.

To the clerk of the county court a sum not exceeding two hundred dollars, except that the clerk of the county court of Barbour, Grant, Hardy, Pendleton, Greenbrier, Logan, Mineral, Monroe, Pleasants, Putnam, Upshur, Pocahontas and Wayne counties shall be allowed a sum not less than three hundred dollars nor more than six hundred dollars; and in the counties of Ritchie, Lewis and Fayette a sum not less than six hundred nor more than one thousand dollars, and in the counties of Tyler and Taylor not less than three nor more than eight hundred dollars; and in the counties of Summers, Har-

risson, Wirt, Calhoun, Gilmer, Mercer and Wyoming not less than three hundred nor more than six hundred dollars; and to the clerk of the county courts of Berkeley, Braxton and Hampshire a sum not to exceed five hundred dollars; and to the clerk of the county courts of Cabell, Marion, Marshall, Mason, McDowell, Mingo, Monongalia, Roane, Kanawha, Preston, Wetzel, Jackson and Wood counties, a sum not to exceed six hundred dollars each; and to the clerk of the county courts of Lincoln, Tucker, Clay, Nicholas, Raleigh, Randolph and Doddridge counties, a sum not less than four hundred nor more than six hundred dollars each, and to the clerk of the county court of Ohio county a sum not in excess of five hundred dollars.

To the prosecuting attorney not less than two hundred nor more than four hundred dollars, except as follows: in the counties of Brooke, Barbour, Nicholas, Webster, Ritchie, Hancock, Monroe and Upshur not less than three hundred nor more than six hundred dollars; and in the counties of Mercer, Gilmer, Wetzel, Tyler, Pleasants, Greenbrier, Doddridge, Wayne, Calhoun and Jefferson not less than six nor more than twelve hundred dollars; and in the county of Hampshire not less than four hundred nor more than eight hundred dollars; and in the counties of Clay, Raleigh and Lewis, not less than eight hundred nor more than one thousand; and in the counties of Berkeley, Jackson, Marshall, Mingo, Mineral, Preston, Summers, Roane, Braxton, Monongalia, Putnam, Lincoln, Tucker, Wyoming, Randolph and Logan, not less than five hundred nor more than one thousand dollars; in the counties of Mason, Taylor and Pocahontas not less than five hundred nor more than twelve hundred dollars; and in the counties of Cabell, Fayette, Harrison, Kanawha, Marion, McDowell and Wood not less than two thousand nor more than three thousand dollars; and in the county of Ohio not less than twenty-five hundred nor more than thirty-five hundred dollars.

But no extra compensation shall be allowed any public officer, agent, servant or contractor, after the service shall have been rendered or the contract made; nor shall any public officer have his salary increased or diminished during his term of office.

And it shall be the duty of the prosecuting attorney to attend to, bring or prosecute, or defend, as the case may be, all actions, suits and proceedings in which his county or any district board of education is interested, without additional compensation.

(House Bill No. 9.)

## CHAPTER 33.

AN ACT to give a sheriff power to take bonds on *capias profine*, out of open court.

(Passed February 9, 1909. In effect ninety days from passage. Approved by the Governor February 15, 1909.)

Sec. 10. When <i>capias profine</i> may be issued ; release from imprisonment ; bond for payment of fine and		Sec.       costs ; judgment and execution in default.
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*Be it enacted by the Legislature of West Virginia:*

That section ten of chapter thirty-six of the code of West Virginia be amended and re-enacted so as to read as follows:

Sec. 10. When a judgment for fine and costs is rendered by a circuit court or other court of record having jurisdiction in criminal cases, the court may order a *capias profine* to be issued thereon at any time during the term at which the judgment is rendered, and if no such order be made, such *capias* shall be issued by the clerk of the court in vacation if he be ordered so to do by the prosecuting attorney. If the judgment of the court in such case be that the defendant be imprisoned and fined, or that he be fined and imprisoned until the fine and costs be paid, or if the defendant be imprisoned by virtue of such *capias profine*, in either event, the defendant may be released from such imprisonment where he is detained for a failure to pay such fine and costs, only, upon his giving bond with good security before the court, or before the clerk thereof in vacation, or before the sheriff of the county in which such judgment is rendered, payable to the state of West Virginia, for the payment of such fine and costs, at a time not exceeding twelve months after the date of such bond. If default be made in the payment of such bond, the same may be proceeded on to judgment and execution as if it were a forthcoming bond, such as is provided in chapter one hundred and forty-two of the code.

(House Bill No. 56.)

**CHAPTER 34.**

**AN ACT** to amend and re-enact section seven of chapter one hundred and twenty of the code of West Virginia, relating to the appointment, removal and compensation of assistants to prosecuting attorneys.

(Passed February 24, 1909. In effect from passage. Approved by the Governor February 27, 1909.)

Sec.

7. Assistant prosecuting attorneys; how appointed; by whom; duties; removal of; by whom; compensation; excepted counties; inability of prosecutors

Sec.

or assistants to serve; appointment of acting prosecutor; sum allowed; by whom paid; may employ attorneys to assist prosecution.

*Be it enacted by the Legislature of West Virginia:*

That section seven of chapter one hundred and twenty of the code of West Virginia be amended and re-enacted so as to read as follows:

Sec. 7. Any prosecuting attorney may, with the assent of the county court of his county, entered of record, appoint one practicing attorney to assist him in the discharge of his official duties for and during his term of office, and such assistant shall take the same oath of office and may perform the same duties as his principal; and he may be removed from office as such assistant at any time by his principal; and further, he may be removed from office as such assistant by the circuit court of the county in which he is appointed, for any cause for which his principal might be so removed. The compensation of such assistant shall be paid by the principal from the income of the office, except in the counties of Fayette, Kanawha, Marion, McDowell, Mingo, Wood and Ohio; and in said counties of Fayette, Kanawha, Marion, McDowell, Mingo, Ohio and Wood the county court thereof shall allow annually to such assistant such compensation to be paid out of the county treasury as is deemed reasonable by the county court, not to exceed two thousand dollars annually. The prosecuting attorney and his assistant (if he have one) shall manage and control all prosecutions for crimes and misdemeanors tried in the circuit court, or in any other court, having concurrent jurisdiction with the circuit court of the trial of crimes and misdemeanors, of any county, for



which such prosecuting attorney was elected or appointed. *Provided*, that in any case in which it would, in the opinion of the court, be improper for the prosecuting attorney and his said assistant (if he have one) to act, or if he should be ill and unable to act, such court shall appoint some competent practicing attorney to prosecute such case, and upon the performance of the service for which he was appointed, said court shall certify that fact, with its opinion of what would be a reasonable allowance to such attorney for the service rendered, to the county court of the county, and such sum or a different sum, when allowed by the county court, shall be paid out of the county treasury. *Provided, further*, that nothing in this section shall be construed to prohibit the employment by any person, of competent attorneys to assist in the prosecution of any person or corporation, charged with crime.

(Senate Bill No. 13.)

## CHAPTER 35.

AN ACT fixing the salaries of the judges of the supreme court of appeals.

(Passed February 20, 1909. In effect ninety days from passage. Approved by the Governor February 26, 1909.)

Sec.

1. Fixing salaries of judges of the supreme court of appeals.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That from and after the first day of July, one thousand nine hundred and nine, the judges of the supreme court of appeals shall receive an annual salary of five thousand five hundred dollars each, payable monthly out of the treasury.

(House Bill No. 289.)

**CHAPTER 36.**

**AN ACT** to amend and re-enact section seven of chapter one hundred and thirty-seven of the code of West Virginia, as amended and re-enacted by chapter eleven of the acts of the legislature of one thousand nine hundred and four, relating to the fees of officers.

(Passed February 26, 1909. In effect ninety days from passage. Approved by the Governor March 1, 1909.)

**Sec.**

7. Recordation of writings by clerk of county court; fees chargeable.

*Be it enacted by the Legislature of West Virginia:*

That section seven of chapter one hundred and thirty-seven of the code of West Virginia, as amended and re-enacted by chapter eleven of the acts of the legislature of one thousand nine hundred and four, relating to the fees of officers, is hereby amended and re-enacted so as to read as follows:

*Clerk of the County Court.*

**Sec. 7.** When a writing is admitted to record by the clerk of the county court:

For receiving proof of acknowledgement thereof, entering an order in connection therewith, endorsing clerk's certificate or recordation thereon, and indexing in a proper index, where the writing is a deed of conveyance, trust deed, lease or power of attorney concerning real estate.....	\$1.25
And if such writing contains more than one thousand words, for every additional thirty words .....	.03
For recording a plat, whether separate from, or accompanying a deed or other writing .....	.50
And if such plat contain more than six courses, for each additional course .....	.03
For recording, indexing and noting release of lien.....	.50
For recording and indexing reservation of title .....	1.00
For recording and indexing certificate of incorporation.....	1.25
For certifying to the assessor a transfer of real estate, under section thirty-one of chapter twenty-nine of the code.....	.50

For certificate for a license, alteration or assignment.....	.50
For swearing the witnesses and entering in the order, or minute book, all orders in relation to the proof of a will which is admitted to record without contest, and copying such order on the will or on a paper annexed thereto, when fully proved, and but one order .....	.75
If but partially proved on one day, for the order and entering the same on the will or paper annexed thereto .....	.50
And for each subsequent order and entering the same on the will or paper annexed thereto .....	.50
For the same services where there is a contest.....	2.00
For recording a will and the matter recorded therewith in the will book, at the option of the clerk, three cents for every thirty words or a specific fee of .....	.50
For entering orders and transmitting papers in case of an appeal .....	.75
If there be an order committing decedent's estate to an officer, for entering and copying such order and the orders of appraisalment .....	.50
If any personal representative or guardian qualify, for administering necessary oaths, making out bond, entering and copying on the will order granting probate or administration, making out copy of such order for personal representative or guardian, entering and copying orders of appraisalment .....	1.00
If several personal representatives qualify on the same estate at the same time or term, only the same fee shall be charged as if one had qualified, to-wit .....	1.00
For entering and copying an order granting a license to keep a hotel or tavern, where spirituous liquors are sold....	1.00
For entering and copying an order granting a license to keep a hotel or tavern, where spirituous liquors are sold, administering oath and taking bond .....	2.00
On application for marriage license, for administering and writing certificate of oath, issuing and registering license and recording and giving receipt for certificate of marriage .....	2.00
One-half of which fee shall be paid by the county clerk into the state treasury, in the same manner that license taxes are paid into the treasury under chapter thirty-two of the code.	

For search for anything in his office over a year's standing..	.25
For recording a certificate and posting a copy thereof under the second section of chapter sixty-one of the code .....	.50
For docketing under chapter one hundred and thirty-nine of the code, a judgment, decree, bond or recognizance.....	.35
For re-docketing the same when required .....	.35
For making out a transcript of the record and proceedings in any case in due form, so that the same may be used in an appellate court, for every thirty words, three cents; and for making out in any other manner than copying, any paper to go out of the office, which is not otherwise provided for, the same; or in lieu thereof, if the clerk elect, a specific fee of .....	.50
For any copy, if it be not otherwise provided for, three cents for every thirty words, or in lieu thereof, if the clerk elect, a specific fee of .....	.35
For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, and writing certificate of the president of the court or judge, if the clerk be required to do so .....	.50
For recording and filing an inventory or sale bill, three cents for every thirty words, or, at the option of the clerk, a specific fee of .....	.50
For entering an order confirming the report of a fiduciary....	.50
For recording such report and matter recorded therewith, for every thirty words three cents; or in lieu thereof, if the clerk elect, a specific fee of .....	.50
For recording any bond required by law to be recorded, including the certificate or other evidence of its execution....	.50
For recording a mechanics lien, three cents for every thirty words; or at the option of the clerk, a specific fee of.....	.50
For recording a certificate of real estate claimed as a homestead .....	.50
For administering an oath, not before provided for, and writing certificate thereof where the case requires one.....	.15

(Senate Bill No. 27.)

CHAPTER 37.

AN ACT to amend and re-enact sections twenty-two and twenty-three of chapter one hundred and sixteen of the code of West Virginia of one thousand nine hundred and six, serial sections three thousand seven hundred and twenty-two and three thousand seven hundred and twenty-three, relating to the pay of grand and petit jurors.

(Passed February 20, 1909. In effect ninety days from passage. Approved by the Governor February 26, 1909.)

Sec.  
22. Pay of grand jurors; not less than \$1.50 nor more than \$2.50 per day; same mileage as witnesses; limit of service; counties excepted.

Sec.  
23. Persons summoned by *venire facias*; taxation of costs in misdemeanor cases; clerks of circuit courts shall certify to county courts all money paid by them to sheriffs, etc.

*Be it enacted by the Legislature of West Virginia:*

That sections twenty-two and twenty-three of chapter one hundred and sixteen of the code of one thousand nine hundred and six, serial sections three thousand seven hundred and twenty-two and three thousand seven hundred and twenty-three, be amended and re-enacted to read as follows:

Sec. 22. Every person who shall serve upon a grand jury shall be entitled to receive for such services not less than one dollar and fifty cents and not more than two dollars and fifty cents for each day he may so serve, and in addition thereto the same mileage as allowed to witnesses, to be paid out of the county treasury. But he shall not be paid for more than four days services at any one term of the court, except in the counties of Kanawha, McDowell, Fayette, Cabell, Marshall, Wetzell, Tyler, Marion, Wood, Ohio and Mingo, where such grand jurors shall not be paid for more than ten days' service for any one term of court.

Sec. 23. Any person summoned as aforesaid, by virtue of a *venire facias* or otherwise and actually attending upon the court, or attending at the court house, at the time summoned, whether he be called to serve on a jury or not, shall for each day he so attends, be entitled to receive not less than one dollar and fifty cents and not more than two dollars and fifty cents and the same mileage allowed to witnesses, to be paid out of the county treasury. The county court shall fix the compensation as provided for above, in the same manner and at the same time that the annual allowances are made to county officers.

*Provided*, that for any day that any person shall be sworn to serve on a case of felony he shall, for that day, and any other days he may so serve on such case, be paid two dollars and fifty cents out of the state treasury. That for each day he shall not actually attend the court house he shall receive nothing, and that mileage shall be allowed but once during the term. There shall be taxed in the costs against any person against whom a judgment on the verdict of a jury may be rendered in a case of misdemeanor, and against any person against whom judgment on the verdict of a jury may be rendered in a civil action, and against any person on whose motion the verdict of the jury is set aside and a new trial granted, eight dollars for jury costs, which, when collected from the party, shall be paid into the county treasury. All moneys so received by the clerk shall be forthwith paid by him to the sheriff, and the clerk and his sureties shall be liable therefor on his official bond, as for other moneys coming into his hands by virtue of his office.

The clerk of the circuit court of each county shall annually certify to the county court a list of all moneys so paid to him and by him paid to the sheriff and in addition thereto a correct list of all the cases in which jury fees have been taxed, and are, at the time, properly due and payable into the county treasury, and the sheriff of the county shall be held to account, in his annual settlement, for all such moneys collected by him.

All acts and parts of acts in conflict herewith are hereby repealed.

(Senate Bill No. 85.)

## CHAPTER 38.

AN ACT to amend and re-enact section five of chapter one hundred and thirty-four of the code of West Virginia, relating to motions to reverse judgments and decrees by default, and the amendment of judgments and decrees.

(Passed February 18, 1909. In effect ninety days from passage. Approved by the Governor February 19, 1909.)

Sec.  
5. When judgments by default may be reversed in courts when such judgments are given; judgments or decrees, reports of commissioners, etc., in

Sec. which mistakes or misrecitals occur may be amended; releases and effect of same; time limit of motions.

*Be it enacted by the Legislature of West Virginia:*

That section five of chapter one hundred and thirty-four of the code be amended and re-enacted, to read as follows:

Sec. 5. The court in which there is a judgment by default, or a decree on a bill taken for confessed, or the judge of said court in vacation thereof, may, on motion, reverse such judgment or decree, for any error for which an appellate court might reverse it, if the following section was not enacted, and give such judgment or decree as ought to be given.

And a court in which is rendered a judgment or decree in a cause wherein there is in a declaration or pleading, or in the record of the judgment or decree, any mistake, miscalculation, or misrecital of any name, sum, quantity or time, when the same is right in any part of the record or proceedings, or when there is any verdict, report of a commissioner, bond, or other writing, whereby such judgment or decree may be safely amended; or in which a judgment is rendered on a forthcoming bond for a sum larger than by the execution or warrant of distress appears to be proper, or on a verdict in an action for more damages than are mentioned in the declaration; or in the vacation of the court in which any such judgment or decree is rendered, the judge thereof may, on motion of any party, amend such judgment or decree according to the truth and justice of the case; or in any such case, the party obtaining such judgment or decree may, in the same court, at any future term, by an entry of record, or in vacation, by a writing signed by him, attested by the clerk, and filed among the papers of the cause, release a part of the amount of his judgment or decree; and such release shall have the effect of an amendment, and make the judgment or decree operate only for what is not released. Every motion under this chapter shall be, after reasonable notice to the opposite party, his agent or attorney in fact, or at law, and shall be within one year from the date of the judgment or decree, unless such judgment or decree was rendered or made before this section as amended takes effect, in which case such motion or amendment may be made within five years from the date of such judgment or decree.

(Senate Bill No. 86.)

## CHAPTER 39.

AN ACT amending sections three and seventeen of chapter one hundred and thirty-five of the code of West Virginia, prescribing the limitation for writs of error and appeals.

(Passed February 16, 1909. In effect ninety days from passage. Approved by the Governor February 19, 1909.)

Sec.

3. Petitions of appeal from writ of error or *supersedeas*; time petitions may be presented; exceptions.

Sec.

17. Process upon appeal, writ of error or *supersedeas*; limitations of same; judgments, decrees or orders not affected.

*Be it enacted by the Legislature of West Virginia:*

That sections three and seventeen of chapter one hundred and thirty-five of the code be amended and re-enacted, to read as follows:

Sec. 3. No petition shall be presented for an appeal from, or writ of error or *supersedeas* to, any judgment, decree or order, whether the state be a party thereto or not, nor to any judgment of a circuit court or municipal court rendered in an appeal from the judgment of a justice, which shall have been rendered or made more than one year before such petition is presented. *Provided*, that if such judgment, decree or order was rendered or made before this section as amended takes effect, such petition may be presented within two years from the date of such judgment, decree or order.

Sec. 17. No process shall issue upon any appeal, writ of error or *supersedeas* allowed to or from a final judgment, decree or order, if when the record is delivered to the clerk of the appellate court there shall have elapsed one year and two months since the date of such final judgment, decree or order, but the appeal, writ of error or *supersedeas* shall be dismissed whenever it appears that one year and two months have elapsed since the said date before the record is delivered to such clerk, or before such bond is given, as is required to be given before the appeal, writ of error or *supersedeas* takes effect. *Provided*, that if such judgment, decree or order was rendered or made before this section as amended takes effect, such process may issue within two years and two months from the date of such judgment, decree or order.

(Senate Bill No. 87.)

## CHAPTER 40.

AN ACT to amend and re-enact section five of chapter one hundred and thirty-three of the code of West Virginia, relating to bills of review and the limitation therefor.



(Passed February 16, 1909. In effect ninety days from passage. Approved by the Governor, February 19, 1909.)

<p>Sec. 3. Court or judge allowing bill of review may award injunction;</p>		<p>Sec. regarding final decree; exceptions.</p>
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*Be it enacted by the Legislature of West Virginia:*

That section five of chapter one hundred and thirty-three of the code be amended and re-enacted, to read as follows:

Sec. 5. A court or judge allowing a bill of review may award an injunction to the decree to be reviewed. But no bill of review shall be allowed to a final decree, unless it be exhibited within one year next after such decree, except that an infant or insane person, or a married woman in a case not relating to her separate property, may exhibit the same within one year after the removal of his or her disability.- *Provided*, that if such decree was pronounced before this section as amended takes effect, such bill of review may be exhibited within three years after such decree.

(Senate Bill No. 88.)

## CHAPTER 41.

AN ACT to amend and re-enact section twenty-five of chapter one hundred and six of the code of West Virginia, relating to re-hearing of attachment cases heard on orders of publication, and fixing a limitation therefor.

(Passed February 16, 1909. In effect ninety days from passage. Approved by the Governor February 19, 1909.)

<p>Sec. 25. Absent defendant against whom a decree has been rendered; when he may petition to have</p>		<p>Sec. proceedings reheard; exceptions.</p>
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*Be it enacted by the Legislature of West Virginia:*

That section twenty-five of chapter one hundred and six of the code be amended and re-enacted, to read as follows:

Sec. 25. If a defendant against whom, on publication, judgment or decree has been or shall hereafter be rendered, in an action or suit in which an attachment has been or may be sued out and levied as provided in this chapter, or his personal representatives,

shall return to, or appear openly in this state, he may, within one year after a copy of such judgment or decree has been or shall be served upon him, at the instance of the plaintiff, or within two years from the date of such judgment or decree, if he be not so served, petition to have the proceedings reheard. On giving security for the costs which have accrued and shall thereafter accrue, such defendant shall be admitted to make defense against such judgment or decree, as if he had appeared in the case before the same was rendered, except that the title of any *bona fide* purchaser to any property, real or personal, sold under such attachment, shall not be brought in question or impeached. But this section shall not apply to any case in which the petitioner, or his decedent, was served with a copy of the attachment, or with process in the suit wherein it issued, more than sixty days before the date of the judgment or decree, or to a case in which he appeared and made defense. *Provided*, that if such judgment or decree was made before this section as amended takes effect, such petition may be filed within the time prescribed by law at the time such judgment was rendered or decree pronounced.

(Senate Bill No. 89.)

## CHAPTER 42.

AN ACT to amend and re-enact section fourteen of chapter one hundred and twenty-four of the code of West Virginia, relating to rehearing of cases heard on orders of publication, and fixing a limitation therefor.

(Passed February 16, 1909. In effect ninety days from passage. Approved by the Governor February 19, 1909.)

Sec.

14. Limit fixed for rehearing of cases heard on orders of publication.

*Re it enacted by the Legislature of West Virginia:*

That section fourteen of chapter one hundred and twenty-four of the code be amended and re-enacted, to read as follows:

Sec. 14. Any unknown party or other defendant, who was not served with process in this state, and did not appear in the case before the date of such judgment, decree or order, or the repre-

sentative of such, may, within two years from that date, if he be not served with a copy of such judgment, decree or order more than one year before the end of said two years, and if he was so served, then within one year from the time of such service, file his petition to have the proceedings reheard in the manner and form provided by section twenty-five of chapter one hundred and six of the code, and not otherwise; and all the provisions of that section are hereby made applicable to proceedings under this section. *Provided* that if such judgment or decree was made before this section as amended takes effect such petition may be filed within the time prescribed by law at the time such judgment was rendered or decree pronounced.

(Senate Bill No. 98.)

## CHAPTER 43.

AN ACT to provide a method for the enforcement of any common law lien on personal property, whether for work and labor performed thereon, or as inn-keeper, livery stable keeper, or otherwise.

(Passed February 26, 1909. In effect ninety days from passage. Approved by the Governor March 1, 1909.)

Sec. 1. Manner of enforcement of common law lien.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. Any common law lien may be enforced against any personal property upon which the same exists, in the same way and manner and by the same methods now or hereafter authorized by law to be used by a landlord to enforce the payment of rent due, and the owner of such personal property may defend and protect his rights therein in the same way and manner, and by the same methods that a tenant may or hereafter be authorized by law to use or employ, for the purpose of defending and protecting his rights in the case of a distress or action for rent.

(House Bill No. 3.)

## CHAPTER 44.

AN ACT to amend and re-enact section thirty-three of chapter one hundred and thirty of the code of West Virginia, relating to taking of depositions.

(Passed February 20, 1909. In effect ninety days from passage. Approved by the Governor February 26, 1909.)

Sec. 33.	Deposition of witness in or out of state; how taken; by whom;		Sec. 33.	may be read in evidence without proof of signature.
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*Be it enacted by the Legislature of West Virginia:*

That section thirty-three of chapter one hundred and thirty of the code of West Virginia, be amended and re-enacted so as to read as follows:

Sec. 33. In any pending case the deposition of a witness whether a party to the suit or not, may without commission, be taken in or out of this state by a justice or notary public, or by a commissioner in chancery, or before any officer authorized to take depositions in the county or state where they may be taken; and such depositions may be taken in shorthand, or stenographic characters or notes, and shall be written out in full and transcribed into the English language by the stenographer taking the same, and certified by the officer before whom the depositions are taken; and if certified by such officer under his hand and if further certified by him that such stenographic characters and notes were correctly taken and accurately transcribed by him, or under his direction and supervision, and that the witnesses were duly sworn, such depositions may be received and read in evidence without proof of the signature to such certificate, and, without the signature of the witness to such depositions; and in case the stenographer taking the said depositions is not the officer before whom the same is being taken, then such stenographer before proceeding to take any of said depositions, shall be sworn to take correctly and accurately transcribe the same, and the certificate of the officer before whom the depositions are taken shall state that the stenographer was so sworn.

(House Bill No. 13.)

### CHAPTER 45.

AN ACT to amend and re-enact section fourteen of chapter seventy-five of the code of West Virginia, edition one thousand eight hundred and ninety-nine, concerning liens on vessels.

(Passed February 3, 1909. In effect ninety days from passage. Approved by the Governor February 19, 1909.)

Sec. 14. Liens upon domestic steam-boats and other craft for work done		Sec. or material or supplies furnished; enforcement of lien.
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*Be it enacted by the Legislature of West Virginia:*

That section fourteen of chapter seventy-five of the code of West Virginia, edition one thousand eight hundred and ninety-nine, be amended and re-enacted so as to read as follows:

Sec. 14. The citizens of this state shall have a lien upon all domestic steam-boats, steamers and other vessels, propelled wholly or in part, by steam, gas, fluid, naphtha or electricity, which ply upon the navigable waters of this state and registered in this state, for all work, material furnished or labor done upon said vessel and for all material, goods, wares, merchandise, machinery and equipment furnished said vessels, said lien to be enforced by appropriate remedy in the courts of this state, having jurisdiction of the subject matter.

(House Bill No. 151.)

### CHAPTER 46.

AN ACT amending and re-enacting sections one, two and sixteen of chapter fifty-one of the code of West Virginia, as amended and re-enacted by chapter twenty of the acts of one thousand eight hundred and eighty-two, relating to the appointment, term and commissions of notaries public, and the fees to be paid for such commission.

(Passed February 25, 1909. In effect ninety days from passage. Approved by the Governor February 27, 1909.)

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| <p>Sec.</p> <p>1. Terms of notaries; expire when; provision for appointment made since 1903.</p> <p>2. Governors to appoint and commission notaries; term of office; power of removal; applicant</p> | <p>Sec.</p> <p>16. Official signature of notary must state date of expiration of commission; duty of secretary of state to notify of expiration.</p> |
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*Be it enacted by the Legislature of West Virginia:*

Sec. 1. The notaries now in office shall continue therein until the thirty-first of December, one thousand nine hundred and nine, when their respective terms of office shall expire, unless otherwise sooner removed in the manner prescribed by law.

*Provided*, that the term of office of all notaries commissioned since the thirty-first day of December, one thousand nine hundred and three, shall continue for a period of ten years from the date of such commission.

Sec. 2. The governor shall appoint and commission so many notaries in this state, and for such counties as he may deem proper, who shall hold their office respectively for a term of ten years from the date of their commission, but may be removed or their office vacated, pursuant to the third and tenth sections of chapter seven, or the twenty-first and twenty-second sections of chapter ten of the code.

*Provided*, that before such appointment is made, the applicant shall obtain from the county court of his county, a certificate showing the applicant to be a person competent to perform the duties of such office, of good moral character and a resident of the county from which the appointment is made.

Sec. 16. The official signature of any notary shall state the date of expiration of his commission, but a mis-statement of such date shall not invalidate any official act of such notary; *provided*, his commission be at the time thereof in force.

It shall be the duty of the secretary of state to notify, before December first, one thousand nine hundred and nine, all notaries commissioned since December thirty-first, one thousand nine hundred and three, by letter mailed to last known address, of the date of expiration of their respective commissions.

(Substitute House Bill No. 191.)

## CHAPTER 47.

AN ACT amending and re-enacting section four thousand one hundred and forty-six, code of one thousand nine hundred and six, being chapter one hundred and twenty-six, acts of one thousand eight hundred and eighty-two. entitled, "Lien of Judgment on Real Estate."

Passed February 23, 1909. In effect ninety days from passage. Approved by the Governor February 27, 1909.)

<p>Sec. 4146. Lien of judgment on real estate; docketing; bona fide purchasers; judgments of justices of the peace; execution on judg-</p>		<p>Sec. ment or copy thereof to be filed; duty of clerk of county court; fees.</p>
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*Be it enacted by the Legislature of West Virginia:*

That chapter one hundred and twenty-six, acts of one thousand eight hundred and eighty-two, being section four thousand one hundred and forty-six, code of one thousand nine hundred and six, be amended and re-enacted so as to read as follows:

Sec. 4146. No judgment shall be a lien on real estate as against a purchaser thereof for valuable consideration without notice, unless it be docketed according to the third and fourth sections of this chapter, in the county wherein such real estate is, either within sixty days next after the date of such judgment or before a deed therefor to said purchaser is delivered for record to the clerk of the county court.

*Provided*, that the judgment of a justice of the peace shall not be a lien on real estate against such purchaser, until the same is docketed as aforesaid, and

*Provided, further*, that no judgment which is a lien on real estate shall continue a lien on such real estate, in case execution issue thereon, unless the execution issued on said judgment, or a copy thereof be filed in the office of the clerk of the county court, wherein such real estate is situate, within ten years from the date of said judgment or in case other executions have theretofore issued on said judgment, then within ten years from the date of the last execution so issued thereon.

And it shall be the duty of the clerk of the county court wherein such real estate is situate, to note on the page of the judgment docket where such judgment is docketed, the date on which said execution was issued and the date of the filing of the same in said office, and for said service the clerk shall receive a fee of twenty-five cents to be paid by the person filing such execution or copy.

(House Bill No. 222.)

## CHAPTER 48.

AN ACT to amend and re-enact sections one, two and four of chapter one hundred and twenty of the code of one thousand nine hundred and six, adding section two-*a* thereto, enlarging the duties and powers of the attorney general, and fixing his salary.

(Passed February 19, 1909. In effect March 4, 1909. Approved by the Governor February 27, 1909.)

Sec.

1. Duty of attorney general to give written opinion and advice when required to do so by certain state officials.
2. Shall appear as counsel for state in causes before supreme court of appeals and federal courts; in other courts upon request of

Sec.

- governor; other duties defined.
- 2-*a*. Salary of attorney general; appointment of assistants; salaries of assistants.
  4. Fee of attorney general to be paid into state treasury; inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

That section one, two and four of chapter one hundred and twenty of the code of one thousand nine hundred and six be amended and re-enacted so as to read as follows, and that section two-*a* be added to said chapter:

Sec. 1. The attorney general shall give his written opinion and advice whenever required to do so, in writing, by the governor, the secretary of state, the auditor, the state superintendent of free schools, the treasurer, the board of public works, the tax commissioner, the state archivist and historian, the commissioner of banking, the adjutant general, the chief of the department of mines, and the heads of the state educational, penal and eleemosynary institutions.



Sec. 2. He shall appear as counsel for the state in all causes pending in the supreme court of appeals, or in any federal court in which the state is interested; he shall appear in any cause in which the state is interested that is pending in any other court in the state upon the written request of the governor, and when such appearance is entered he shall take charge of and have control of such cause; he shall defend all actions and proceedings against any state officer in his official capacity in any of the courts of this state or any of the federal courts, when the state is not interested in such cause against such officer, but should the state be interested against such officer, he shall appear for the state; he shall institute and prosecute all civil actions and proceedings in favor of or for the use of the state which may be necessary in the execution of the official duties of any state officer; he may consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office, and may require a written report from them of the state and condition of the several causes in which the state is a party, pending in the courts of their respective counties; he shall keep, in proper books, a register of all causes prosecuted or defended by him in behalf of the state or its officers and of the proceedings had in relation thereto, and deliver the same to his successor in office; he shall preserve in his office all his official opinions and publish the same in his biennial report.

Sec. 2-a. He shall receive for his services as attorney general an annual salary of four thousand dollars; *provided*, he shall reside at the seat of government, and he is hereby authorized to appoint two assistants to serve at his pleasure, who shall receive for their services an annual salary of two thousand five hundred dollars each, and who may perform any of the duties of the attorney general.

Sec. 4. On the final determination of any cause in any of the courts mentioned in the second section in which the attorney general appeared for the state, the clerk thereof shall certify to the auditor the fee of the attorney general which was taxed in the bill of costs against the defendant, and when said fee shall be collected it shall be paid into the state treasury and placed to the credit of the state fund.

All acts and parts of acts coming within the purview of the act and inconsistent therewith are hereby repealed.

(Senate Bill No. 56.)

## CHAPTER 49.

AN ACT to amend chapter seventy-seven of the code of West Virginia concerning wills by adding thereto an additional section to be numbered "thirty-five," for the purpose of protecting the title of a *bona fide* purchaser of real estate from the heir or heirs at law of a decedent against a devise of said real estate without notice to such purchaser.

(Passed February 22, 1909. In effect ninety days from passage. Approved by the Governor February 26, 1909.)

Sec. 35. Title of bona fide purchaser of real estate of heirs under will;		Sec. how protected; exceptions.
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*Be it enacted by the Legislature of West Virginia:*

That chapter seventy-seven of the code of West Virginia be and the same is hereby amended by adding thereto an additional section to be numbered and to read as follows:

Sec. 35. The title of a *bona fide* purchaser without notice and for valuable consideration from the heir or heirs at law of a person who died having title to any real estate of inheritance in this state shall not be affected by a devise of such real estate made by the decedent, unless within three years after the testator's death the will devising the same, or if such will has been proved without this state, an authenticated copy thereof shall be admitted to probate and record, by the court having jurisdiction for that purpose, or by the clerk thereof, as a will of real estate.

*Provided*, the title of a devise holding an estate in land at the time this act takes effect shall not be affected hereby, if such devise caused the will under which he so holds title, or, if such will has been proved without the state, an authenticated copy thereof, to be admitted to probate and record by the court having jurisdiction for that purpose, or by the clerk thereof, in the county where such land is situate, within three years after this act takes effect.

*Provided, further*, that if any devise under any will mentioned in this section is at the time of the testator's death an infant or insane, the limitations created by this act shall not affect such infant or insane person until after the expiration of three years from the removal of his or her disability.

(House Bill No. 341.)

## CHAPTER 50.

AN ACT providing for the submission of two proposed amendments to the constitution of the state of West Virginia, as follows:

*First.* Amending section four of article four.

*Second.* Amending the constitution in relation to the supreme court.

(Passed February 25, 1909. In effect ninety-days from passage. Approved by the Governor February 27, 1909.)

Sec.

1. Amendments to constitution; submission of; when; first proposed amendment; election or appointment to state, county or municipal office; age of appointee; citizenship; right of female citizen to appointment; for what offices; second proposed amendment; supreme court of appeals; how constituted; judges in office; their terms; provision for election of; when; terms of office; appointment by governor; additional judges; when elected; term of office; election of chief justice; may sit in two divisions; power of each part; apportionment of business; by whom; concurrence of four judges necessary to decision when court sits *en banc*.
2. Designation of amendments; "qualification amendment," "supreme court amendment."
3. Voters to decide; when; ballot commissioners to provide separate ballot; form of ballot; ballots supplied to each coun-

Sec.

- ty; commissioners of election shall furnish separate ballot; voter may use any printed or written ballot; no ballot shall be rejected if intention of voter is clearly shown; may vote on any or all amendments; voting places; how superintended; ascertainment of result; by whom; ballots cast on proposed amendments shall be sealed and separated from other ballots cast.
4. Officers of election shall issue certificates; form used; delivered to whom; presentment of ballots and certificates to commissioners of county court; certificates of result to be issued by court; form used; disposition of certificates.
5. Certificates shall be laid before governor; announcement of result by governor after ascertainment; in effect from announcement of ratification.
6. Amendments to be published; length of time; cost of advertising; how paid.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That the question of the ratification of rejection of two amendments to the constitution of West Virginia, proposed in accordance with the provisions of section two of article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred and ten, which two proposed amendments hereby numbered are as follows:

*First Proposed Amendment.*

Section four of article four to be amended so as to read as follows:

Sec. 4. No person except a citizen entitled to vote shall, except as hereinafter provided, be elected or appointed to any state, county or municipal office; but the governor and judges must have attained the age of thirty, and the attorney general and senators the age of twenty-five years at the beginning of their respective terms of service and must have been a citizen of the state for five years next preceding their election or appointment, or be a citizen at the time this constitution goes into operation; *provided, however,* that a female citizen of the state who has attained the age of twenty-one years and who has resided in the state for the period of not less than five years next preceding her appointment, may be appointed a member of the board of regents or other administrative body, of any educational, humane or penal institutions of the state, wherein female persons are educated, cared for or confined, and may be commissioned notary public, and may be appointed inspector of labor, deputy clerk of the supreme court of appeals and of the circuit, county or other courts of this state.

*Second Proposed Amendment.*

Amending the constitution in relation to the supreme court so as to read as follows:

1. The supreme court of appeals shall consist of seven judges, the judges of said court in office when this amendment shall take effect, shall continue in office until their terms shall expire, and the legislature shall provide for the election of two additional judges thereof at the first general election held after the adoption thereof, whose terms of office shall begin on the first day of January, one thousand nine hundred and thirteen, and the governor shall, as for a vacancy, appoint two judges of said court to hold office until the first day of January, one thousand nine hundred and thirteen. Two additional judges elected in the year one thousand nine hundred and twelve shall hold their respective offices for the period of eight years, and thereafter their successors shall be elected for terms of twelve years.

2. The judges thereof shall annually elect from their number a chief justice. The court may sit *en banc* or in not more than two divisions, to be designated as part one and part two, and if in divisions, the chief justice shall assign three of the judges in each part. The judges shall be competent to sit in either division and

the chief justice shall annually assign three of them to each part, and, at the expiration of each year, so re-assign them, that not more than two of those who sat in one part, shall sit in, or participate in the work of that division in the succeeding year; *provided, however*, in the absence of one or more of the judges of either part, the chief justice may temporarily transfer to it, a member of the other part. Each part shall have power under such rules, regulations and limitations as the whole court may prescribe, to hear cases and render decisions as effectual and binding in all respects, as if rendered by the entire court; *provided*, that no decision shall be rendered without concurrence therein of three judges. The chief justice shall apportion the business of the court between the parts, and may, in his discretion, order any cause pending before the court to be heard and decided by the court *en banc*, and, in any case heard *en banc*, the concurrence of four judges shall be necessary to a decision. The chief justice may sit and act in either part, and shall preside when so sitting, but the judges assigned to each part shall select one of their number as presiding judge.

Sec. 2. For convenience in referring to the said proposed amendments and in the preparation of the form of the ballot hereinafter provided for, said two proposed amendments, as hereinbefore numbered, are hereby designated as follows:

No. 1. To be known as "Qualification Amendment."

No. 2. To be known as "Supreme Court Amendment."

Sec. 3. For the purpose of enabling the voters of the state to vote on the question of said proposed amendments to the constitution, at the said general election to be held in the year one thousand nine hundred and ten, the board of ballot commissioners of each county are hereby directed to provide and have printed a separate ballot of convenient size, distinctly printed and in form substantially as follows:

#### BALLOT ON CONSTITUTIONAL AMENDMENTS.

(1) *Qualification Amendment.*

Amending section four of article four.

For Ratification.

For Rejection.

(2) *Supreme Court Amendment.*

Amending the Constitution in relation to the supreme court.

For Ratification.

For Rejection.

*Each amendment to be voted on separately.*

The same number of separate ballots shall be printed, and shall be supplied to the several voting places in each county, and paid for in the same manner as is provided for, for the regular ballots to be used at said general election, as set out and specified in chapter three of the code of West Virginia. The commissioners of election at the several voting places in each county, shall, upon request, furnish to each voter, one of said separate ballots, to be used by him for voting on the question of said proposed amendments; but any voter shall also have the right to vote on the question of said proposed amendments, by any other ballot printed or written, which he may see fit to use, and which sufficiently discloses his intention, and no ballot cast at said election on the question of the proposed amendments, shall be rejected if it sufficiently appears therefrom, what the voter intended; and every voter shall have the right to vote on all of said proposed amendments, or on as many of them as he shall see fit.

The said election on the proposed amendments at each place of voting, shall be superintended, conducted and returned, and the result thereof ascertained, by the same officers and in the same manner as the election of members of the legislature is superintended, conducted and returned and the result ascertained, at said election; and all of the provisions of the law relating to general elections, including all duties to be performed by any officer or board, as far as applicable and not inconsistent with anything herein contained, shall apply to the election held under the provisions of this act, except when it is herein otherwise provided. The ballots cast on the question of said proposed amendments, shall be counted, strung and sealed up separately from other ballots cast at said election.

Sec. 4. As soon as the result is ascertained, the commissioners, or a majority of them, and the canvassers (if there be any) or a majority of them at each place of voting, shall make out and assign two certificates thereof, in the following form, or to the following effect: "We, the undersigned, who acted as commissioners (or canvassers, as the case may be), of the election held at \_\_\_\_\_, in the district of \_\_\_\_\_, in the county of \_\_\_\_\_, on the

\_\_\_\_\_ day of \_\_\_\_\_, one thousand nine hundred and ten, upon the question of the ratification or rejection of the proposed constitutional amendments, to section four of article four, and amending the constitution in relation to the supreme court, do hereby certify that the result of said election is as follows:

Amending section four of article four.

For ratification, \_\_\_\_\_ votes.

For rejection, \_\_\_\_\_ votes.

Amending the constitution in relation to the supreme court.

For ratification, \_\_\_\_\_ votes.

For rejection, \_\_\_\_\_ votes.

Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine hundred and ten."

The said two certificates shall correspond with each other in all respects, and contain the full and true returns of said election at each place of voting on said questions. The said commissioners, or any one of them, (or said canvassers or one of them, as the case may be), shall within four days, excluding Sundays, after that on which said election was held, deliver one of said certificates to the clerk of the county court together with the ballots, and the other to the clerk of the circuit court of the county.

The said certificates together with the ballots cast on the question of said proposed amendments, shall be laid before the commissioners of the county court at the court house at the same time the ballots, poll books and the certificates of the election for the members of the legislature are laid before them; and as soon as the result of said election in the county upon the question of such ratification or rejection is ascertained, two certificates of such result shall be made out and signed by said commissioners, as a board of canvassers, in the form or to the following effect:

"We, the board of canvassers of the county of \_\_\_\_\_, having carefully and impartially examined the returns of the election held in said county, in each district thereof, on the \_\_\_\_\_ day of November, one thousand nine hundred and ten, do certify that the result of the election in said county, on the question of the ratification or rejection of the proposed amendments to section four of article four, and amending the constitution in relation to the supreme court, is as follows:

Amending section four of article four.

For ratification, \_\_\_\_\_ votes.

For rejection, ----- votes.

Amending the constitution in relation to the supreme court.

For ratification. ----- votes.

For rejection, ----- votes.

Given under our hands this ----- day of -----, one thousand nine hundred and ten.”

One of the certificates shall be filed in the office of the clerk of the county court, and the other forwarded by mail to the secretary of state, who shall file and preserve the same until the day on which the result of said election in the state is to be ascertained, as hereinafter stated.

Sec. 5. On the twenty-fifth day after the election is held, or as soon thereafter as practicable, the said certificates shall be laid before the governor, whose duty it shall be to ascertain therefrom the result of said election in the state, and declare the same by proclamation, published in one or more newspapers printed at the seat of government. If a majority of the votes cast at said election upon said question be for ratification of said amendment, or any of them, the proposed amendments so ratified, shall be of force and effect from the time of such ratification and the parts of the constitution of the state.

Sec. 6. The governor shall cause the said proposed amendments with the proper designations for the same as hereinbefore adopted, to be published at least three months before such election, in some newspaper in every county in which a newspaper is printed, at a price to be agreed upon, in advance, in writing, and the cost of such advertising shall in the first instance, if found necessary by him, be paid out of the governor's contingent fund, and be afterwards repaid to such fund by appropriation of the legislature.

(Substitute Senate Bill No. 34.)

## CHAPTER 51.

AN ACT to amend and re-enact section seven of chapter one hundred and forty-eight of the code of West Virginia, relative to offenses against the peace.



(Passed February 16, 1909. In effect ninety days from passage. Became a law without the approval of the Governor.)

SFC.

7. Carrying deadly weapons a misdemeanor; penalty for first and second offenses; duty of prosecuting attorney in grand jury charges; second conviction of boys under eighteen years of age; state license for carrying weapons may be obtained; in what manner; eligibility for license; fee for same; applicant must give bond with security; costs and damages accruing from accidental or illegal discharge of pistol; term of license; disposition of license tax; provision for carry-

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ing weapons in good faith on own premises, or from place of purchase to place of residence; when peace justices may authorize carrying of weapons; penalty for negligent or unlawful use of such weapon; duty of ministerial officers to report violations; failure to report violations a misdemeanor; penalty therefor; provision for sheriffs, deputies, constables and police officers to carry weapons; inconsistent acts and parts of acts repealed.

*Be it enacted by the Legislature of West Virginia:*

That section seven of chapter one hundred and forty-eight of the code be amended and re-enacted so as to read as follows:

Sec. 7. If any person, without a state license therefor, carry about his person any revolver or other pistol, dirk, bowie knife, slung shot, razor, billy, metallic or other false knuckles, or any other dangerous or deadly weapon of like kind and character, he shall be guilty of a misdemeanor, and upon conviction thereof be confined in the county jail for a period of not less than six nor more than twelve months for the first offense; but upon conviction of the same person for the second offense in this state, he shall be guilty of a felony and be confined in the penitentiary not less than one nor more than five years, and in either case fined not less than fifty nor more than two hundred dollars, at the discretion of the court; and it shall be the duty of the prosecuting attorney in all cases to ascertain whether or not the charge made by the grand jury is the first or second offense, and if it shall be the second offense it shall be so stated in the indictment returned, and the prosecuting attorney shall introduce the record evidence before the trial court of said second offense, and shall not be permitted to use his discretion in charging said second offense nor in introducing evidence to prove the same on the trial; *provided*, that boys under the age of eighteen years, upon the second conviction, may, at the discretion of the court, be sent to the reform school of the state. Any person may obtain a state license to carry any such weapon within any county in this state by publishing a notice in some newspaper published in the county in which he resides, setting forth his name, residence and occu-

pation, and that on a certain day he will apply to the circuit court of his county for such state license, and after the publication of such notice for at least ten days before said application is made and at the time stated in said notice upon application to said circuit court, it may grant such person a license in the following manner, to-wit:

*First.* Such person must prove to said court that he is over twenty-one years of age; that he is a person of good moral character, of temperate habits, and is not addicted to intoxication, and has not been convicted of a felony nor of any other offense involving the use on his part in an unlawful manner of any such weapon.

*Second.* He shall file with said court an application stating the purpose or purposes for which he desired to carry any such weapon, and shall show in such application, and prove to the court, good reason and cause for carrying such weapon. Thereupon, if such circuit court be satisfied from the proof that there is good reason and cause for such person to carry such weapon, and all of the other conditions of this act be complied with, said circuit court may grant said license; but before the said license shall be effective such person shall pay to the sheriff, and the court shall so certify in its order granting the license, the sum of ten dollars, and shall also file a bond with the clerk of said court, in the penalty of three thousand five hundred dollars, with good security, signed by a responsible person or persons, or by some surety company, authorized to do business in this state, conditioned that such applicant will not carry such weapon except in accordance with his said application and as authorized by the court, and that he will pay all costs and damages accruing to any one by the accidental discharge or improper, negligent or illegal discharge or use of said pistol. Any such license shall be good for one year, unless sooner revoked, and be co-extensive with the state, and all licenses collected hereunder shall be accounted for to the auditor and paid over by the sheriffs as other license taxes are collected and paid, and the state tax commissioner shall prepare all suitable forms for licenses and bonds and certificate showing that such license has been granted, and do anything else in the premises to protect the state and to see to the enforcement of this act.

*Provided,* that nothing herein shall prevent any person from car-

rying any such weapon, in good faith and not for a felonious purpose, upon his own premises, nor shall anything herein prevent a person from carrying any such weapon (and if it be a revolver or other pistol unloaded) from the place of purchase to his home or place of residence or a place of repair and back to his home or residence; and, *provided, further*, that in cases of riot, public danger and emergency, a justice of the peace or other person issuing a warrant may authorize a special constable and his posse to carry weapons for the purpose of executing a process, and a sheriff in such cases may authorize a deputy or posse to carry weapons, but the justice shall write on his docket the causes and reasons for such authority and the person so authorized, and index the same, and the sheriff or other officer shall write out and file with the clerk of the county court the reasons and causes for such authority and the person so authorized, and the same shall always be open to public inspection, and such authority shall authorize such special constable, deputies and posses to carry weapons in good faith only for the specific purposes and times named in such authority, and upon the trial of every indictment the jury shall inquire into the good faith of the person attempting to defend any such indictment under the authority granted by any such justice, sheriff or other officer, and any such persons so authorized shall be personally liable for the injury caused any one by the negligent or unlawful use of any such weapon. It shall be the duty of all ministerial officers, consisting of the justices of the peace, notaries public and other conservators of the peace of this state, to report to the prosecuting attorney of the county the names of all persons guilty of violating this section, and any person wilfully failing so to do, shall be guilty of a misdemeanor and shall be fined not exceeding two hundred dollars, and shall, moreover, be liable to removal from office for such wilful failure; and it shall likewise be the duty of every person having knowledge of the violation of this act, to report the same to the prosecuting attorney, and to freely and fully give evidence concerning the same, and any one failing so to do, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding one hundred dollars; *provided, further*, that nothing herein contained shall be so construed as to prohibit regularly elected sheriffs, their regularly appointed deputies, who collect taxes in each county, and all regularly elected constables in their respective counties and districts, and all regularly ap-

pointed police officers of their respective cities, towns or villages, from carrying such weapons as they are now authorized by law to carry, who shall have given bond in the penalty of not less than thirty-five hundred dollars, conditioned, for the faithful performance of their respective duties, which said officers shall be liable upon their said official bond, for the damages done by the unlawful or careless use of any such weapon, whether such bond is so conditioned or not.

All other acts or parts of acts inconsistent with this act are hereby repealed.

(Senate Bill No. 140.)

## CHAPTER 52.

AN ACT defining public roads and providing for their establishment, regulation, construction, use and maintenance, and providing for raising revenue in the counties for construction and maintenance of public roads, and defining the office of state commissioner of public roads, and creating the office of county engineer, and prescribing the duties thereof.

(Passed February 24, 1909. In effect ninety days from passage. Approved by the Governor March 3, 1909.)

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1. Meaning of a public road; what it includes.
2. Width of bridges; width of roads and rights-of-way.
3. Grades; exceptions.
4. Term of commissioner defined.
5. Term of county court construed.
6. Term of county engineer defined.
7. Road precincts to remain unless changed by county court.
8. No precinct to include any part of incorporated city, etc.
9. Jurisdiction of incorporated cities, towns or villages over roads, etc., not affected.
10. When streets, bridges, alleys, landings, etc., in incorporated cities, etc., are deemed public roads.
11. Roads, bridges, etc., transferred by state to counties to be regarded as public roads.
12. Condemnation for landing; no effect on incorporated cities, etc.
13. Altered roads; extent of abandonment of former roads.
14. County courts may acquire land for road purposes through gift; to be made matter of record in county clerk's office.

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15. No road to be established or discontinued without due notice.
16. Bids for work let by contract; to be opened in open meeting; to be let to lowest responsible bidder; bidder to furnish security; court may reserve (20) twenty per cent of amount of contract until completion of work; may reject any and all bids; county engineer, or superintendent appointed, to supervise building of roads; bond required and compensation; penalty for neglect of duty.
17. Notices and advertisements for establishment, alteration, etc., of public roads; to be published two weeks in two newspapers of opposite politics.
18. When county engineer may change location of county roads; conditions and exceptions; liability and punishment for unauthorized changes.
19. County court upon petition may discontinue any public road, bridge or road controlled by private citizens; notice must be published; method of procedure.

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20. Establishment or alteration of public road, bridge or landing upon petition; viewers or committee of county court to be appointed; matters to be considered; other routes to be viewed; report may be recommended; where interests of general public are concerned; hearing of parties interested; notice to same; manner of serving notice.
21. Compensation to owners of land and tenants; on acceptance of same court may undertake work.
22. Hearing of application for public road; proceedings to ascertain just compensation for land; option of county court; may lay levy; protection against damages; conditions on which road may be established.
23. County court may build or repair bridge and contract for same; take security or bond from contractor; may issue bonds for work.
24. County court may contract and pay for improving and repairing any county road; may permanently improve and contract therefor; materials to be used; may pay for work out of special levy to be laid, or by issuing bonds.
25. Bond issues to be submitted to vote of people on petition of fifty free-holders who are legal voters; adoption requires three-fifths of all votes cast; manner of holding elections.
26. Roads on line between two counties; how such roads shall be maintained; provisions for disagreement of authorities; remedy by mandamus.
27. If county court determines to make improvements shall advertise for bids; joint award of contract; joint committee to open bids; to report to respective county courts.
28. Contract shall specify such share of cost to be borne by each county.
29. In case levy be burdensome county courts may issue bonds.
30. After completion of work county courts must pay like share in maintaining same they bore toward cost of improvement.
31. Roads maintained jointly by counties; county courts may pass resolutions separately; joint proceedings.
32. When a public road, or section in any magisterial district may be declared a county road under exclusive jurisdiction of county; petition of voters required.
33. Public roads may be divided into sections not more than two miles in length; contract for repairing and keeping in or-

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- der may be sold to lowest bidder; bond and security required; expenses for construction, etc., provided for by poll tax of one dollar and tax on property taxable for county and state purposes.
34. County courts may subscribe for stock in joint stock company formed to construct road or bridge.
35. No tolls to be charged on bridges or roads other than for maintenance; exceptions.
36. Toll collectors and their powers; penalty for evading payment of tolls; other penalties for evasion of the law; exceptions.
37. Penalties for defacing milestones or injuring other property belonging to roads; obstructions to travel; fast or rough locking.
38. Tolls on turnpikes owned wholly or in part by individuals or corporations; exemptions from toll.
39. How turnpikes demanding toll shall be constructed and maintained; counties exempted from provisions of this section; suit for unlawful collection of tolls.
40. When collection of tolls over any road or turnpike has been abandoned, county court must provide for maintenance and repair.
41. Sidewalks may be built alongside of public roads; conditions for same; shall be free to traveling public; in cities or corporate towns.
42. Penalty for injuring or destroying sidewalks.
43. County court upon petition, may erect or remove gates across county roads; notice of petitions must be advertised.
44. County courts wilfully failing or refusing to perform duties required under this act shall be guilty of misdemeanor; penalty upon conviction.
45. Records of titles to rights of way, etc., to be kept by county clerk.
46. Owners of dams must keep such in good order; bridge and flood gate; penalty for failure to observe provisions of act.
47. Erection of wharf, pier or bulkhead by owner of land; if navigation is obstructed same may be abated.
48. Privilege of erecting wharf or public landing on petition to county court; notice to be posted; conditions and limitations.
49. Actions for damages to persons or property by reason of public road, bridge, etc.; court to make levy to satisfy judgments; failure to pay judgment may be enforced by mandamus; how served.
50. Persons injured by reason of defective roads or turnpikes; how

- Sec. damages may be recovered; suits pending not affected by this section.
51. Creation of office of county road engineer; how chosen and qualifications; filling of vacancies and compensation; county surveyor eligible for appointment under certain conditions; county engineer may appoint assistant; compensation to be fixed by court; notice to appointees; county engineer to be under direction of state commissioner of public roads.
52. Engineer may be removed by county court under certain conditions; notice and hearing on charges.
53. On removal of engineer county court may appoint successor to fill unexpired term.
54. Neglect of duty a misdemeanor; penalty attached.
55. County road engineer to cooperate with state commissioner of public roads; to act as agent of county court; subject to rules of state commissioner of public roads; scope of his duties and powers; required to make annual report to state commissioner; additional reports when requested.
56. Required annually to prepare map of county showing district lines; advise county court as to size of districts; county court to divide districts into two or more road precincts.
57. Engineer may employ agent or agents in different precincts to carry out provisions of this act; service required of them; compensation.
58. Engineer required to lay out and divide all county roads in the respective precincts into sections not exceeding two miles; shall specify what improvements are necessary; may recommend construction of new roads.
59. County engineer to call meeting in each magisterial district of all employees; shall instruct in best and most economical plans for working and improving roads; shall expose for sale the public road of each precinct; cannot be bidder or purchaser directly or indirectly; all sales to be reported to the county court.
60. May sell unsold sections of road at private sale, or may have the same kept in repair through employment of proper persons; unlawful to give employment to rather, son or other relative; to furnish itemized statement of expenditures each term of court.
61. Contractor may contract for one or more sections of road; bond in sum equal to estimated cost
- Sec. of work; requirements of contractors.
62. Duties of contractors; must write sum they shall receive in book kept by county engineer.
63. Upon complaint that contractors are neglecting their sections, county engineer shall cause examination to be made; contractors shall be notified if complaint is well founded; if they refuse to make repairs they shall be made by engineer and cost certified to county court; additional cost recoverable from contractors.
64. Engineer to report in writing to county court amount necessary to open and keep in repair roads in each magisterial district payable during next fiscal year; court may alter and correct as deemed proper; tax to be levied; limitation of tax; to constitute a road fund.
65. Persons moving to another precinct not required to pay another in same year.
66. Assessor's compensation; sheriff's commission.
67. Disposal of delinquent list of taxes uncollected.
68. Balance of road fund at end of year to remain to credit of district collected for.
69. Contractors moving out of district may yield up to county engineer unexpired portion of contracts; may be sold at private sale; in case of death.
70. How claims of contractors are paid; duties of county engineer; reservations on contracts.
71. County road engineer shall see that all public roads are put and kept in good repair; roads and bridges to be inspected once every six months; must keep all other works in good condition; erect guide boards; removal of obstructions from roads; cause roads to be inspected when ordered by state commissioner; report to commissioner; additional reports may be required; attend all meetings called by state commissioner.
72. County engineer authorized to purchase for use of magisterial districts, stone crushers, road rollers, etc.; how paid for; no contract valid unless approved by county court; required to make annual inventory of machinery, tools, etc., and deliver same to the county clerk; must provide for housing tools, etc.
73. May lease or hire stone crushers, road rollers, etc.; rate to be paid.
74. County engineer, with approval of county court may purchase gravel bed or stone quarry; may acquire by condemnation;

- Sec. other conditions; when county abandons any acquired right.
75. Obstructions of roads defined.
  76. Removal of obstructions.
  77. What is required of telephone and other companies.
  78. Regulations regarding pipe line companies; cost of removal of obstructions to be charged against such companies or owners.
  79. Engineer shall assess cost of removing and resetting poles and wires against owners of same; how notice shall be served on offending persons or companies; manner of collecting costs.
  80. Penalties for killing trees, wilful destruction of public road property consisting of guide boards, mile post, lamp post, etc.
  81. Penalties for riding or driving over bridge faster than a walk; number of stock to be driven over any bridge; penalties for tearing down or defacing notices.
  82. Penalty for using chained wheel; also for dragging log or stone over roads.
  83. Fines imposed to accrue to county court; exceptions.
  84. Rules regarding driven vehicles meeting; when another vehicle is overtaken; penalties.
  85. Penalties for racing horses on any public road or bridge.
  86. No fine imposed shall bar an action for damages or breach of contract; exceptions.
  87. "L" rails required to be put down by all electrical railways.
  88. Obstructions by railroad companies; must put roads in good condition.
  89. Roads taken for railroad purposes; remedy when such construction is dangerous to public safety and convenience; first proceeding with circuit courts; when change is ordered and company fails to make same county courts may do so and recover expense from company.
  90. County engineer may enter upon lands adjacent to public roads

- Sec. for certain purposes.
91. Engineer may agree with owner of land for damages, subject to approval of county court; damages to be a district charge; action in cases of disagreement.
  92. Owners of property adjoining public roads may plant shade trees, at own expense; regulations.
  93. County road engineer to have care and control of shade trees; exceptions; penalty for injury to trees.
  94. Construction and maintenance of watering troughs.
  95. Work of prisoners on public roads.
  96. County engineer required to measure county roads on order of state commissioner; character and scope of report required.
  97. Owner or tenant of lands fronting on public road required to keep approaches or driveways in repair.
  98. Complaints of unsafe toll bridges belonging to persons or corporations; action in such cases; penalty for refusing to repair or make same safe; county engineer may repair and recover cost from owners.
  99. Action may be brought by county engineer to sustain rights in public roads, etc.; may recover damages.
  100. Penalty for failure of county engineer to prosecute.
  101. Closing of public road being constructed or repaired; notice to be given; only one mile of road to be closed at any one time; temporary road to be constructed; damages so sustained; disregard of notices a misdemeanor.
  102. Necessary books, etc., for county engineer to be furnished by county court.
  103. Engineer to deliver books, accounts, etc., to successor; penalty for failure to do so.
  104. Road officials to pay over to successors all money on hand; penalty for failure.
  105. Jurisdiction of justices of peace in misdemeanor cases.
  106. Inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. A public road, within the meaning of this chapter, includes any road leading from any other public road over one or more person's land to another person's land and which has been established for the convenience of one or more residents or land owners, or persons, or corporation owning or occupying or desiring to use or occupy lands which cannot be reached by any other

public road and to which road the public has the right of or is not denied the use.

A public road shall be deemed to include necessary culverts, sluices, drains, ditches, waterways, embankments, retaining walls, and all bridges having a span five feet or less.

Sec. 2. No bridge unless it be exclusively for footmen, shall be less than fourteen feet wide. All public roads which are now established in any of the counties of this state as public roads shall occupy a right of way not less than thirty feet wide, unless the county court shall have made a special order for a different width, which order must be a matter of record in the office of the county clerk. All public roads which may hereafter be established in any of the counties of this state as public roads shall occupy a right of way not less than forty feet wide, unless the county court order it to be a greater width.

Sec. 3. The grade of any road to be hereafter established shall not exceed five feet rise per hundred feet, unless especially authorized by the county court when such grade is impracticable as to distance or cost of construction, and in no case shall a public road be established having a grade exceeding nine feet rise per hundred feet.

Sec. 4. The term "commissioner" or "commissioner of public roads" as used in this chapter shall mean the state commissioner of public roads.

Sec. 5. The term "county court" in this chapter shall be construed and held to apply to any tribunal heretofore or hereafter established and now existing in any county for police and fiscal purposes in lieu of the county court.

Sec. 6. The term "county engineer" where so used in this chapter shall mean the county road engineer appointed by the county court.

Sec. 7. The road precincts as now established in the several counties of this state, shall remain until changed by the county court.

Sec. 8. No road precinct shall include any part of any incorporated city, town or village, which by the provisions of its charter keeps its own roads, streets and alleys in order.

Sec. 9. Nothing contained in this chapter shall be construed to take from the jurisdiction, charge or control of the council, trustees or other authority of any incorporated city, town or village,



so much of any road, bridge, landing or wharf, or any other thing, as by the laws now in force, is exclusively under such jurisdiction, charge or control.

Sec. 10. Every public road, bridge or landing, and every street or alley, in any incorporated city, town or village heretofore established and opened pursuant to law and which has not been lawfully discontinued or vacated, shall continue as such, until properly discontinued, and every road, street or alley, used and occupied as a public road, street or alley, shall in all courts and places be taken and deemed to be a public road, street or alley (as the case may be) whenever the establishment thereof as such may come in question.

Sec. 11. The roads, bridges and landings transferred by the state to the several counties in which they are located shall hereafter be regarded as public roads, bridges and landings.

Sec. 12. Not more than two acres of land shall be condemned for any landing and no road or landing shall be established by the county court of the county upon or through any lot of any incorporated city, town or village, without the consent of the owner thereof.

Sec. 13. When any road is altered, the former road shall be discontinued to the extent of such alteration and no further, and the new one established.

Sec. 14. Nothing in this chapter shall be so construed as to prevent any county court from acquiring by gift any land for public road purposes as provided in this chapter, but the title to all rights of way, whether secured by gift, purchase or condemnation and all discontinuations of public roads, shall be reported by the county engineer to the county clerk and made a matter of record in the county clerk's office.

Sec. 15. No public road shall be established or discontinued, or the location thereof changed without due notice thereof having been given according to the provisions of section seventeen of this chapter.

Sec. 16. All bids for work to be let to contract under the provisions of this chapter, whether for construction or maintenance, shall be received at the time and place specified in the advertisement and shall be opened in open meeting and the amount and items comprising each bid shall be publicly announced and the contract if let, shall be let to the lowest responsible bidder, who shall furnish satisfactory security in an amount equal to the

amount of the contract in question, to be approved by the county court of the county. The court may as protection to the county reserve from payment twenty per cent of the amount accruing on said contract until the completion of said work and the same is approved by the county road engineer. The court may reject any and all bids and if thought advisable may re-advertise for and receive bids, or may have the same constructed or kept in repair in any other manner that may seem advisable. Under the direction of the county road engineer or by appointing a competent superintendent who shall give bond to be fixed and approved by the county court, and under the supervision of the county road engineer, shall have supervision of the road or roads of the precinct or district for which he was appointed and who shall under the direction of the county court and the county road engineer, devote his entire time and attention to the work, or so much thereof as the court may direct and shall receive as compensation for his services not less than two dollars per day, or the prevailing wages of his county for such work to be determined by the county court. The county court shall hold said superintendent and his bondsmen for the faithful performance of his duty and the court shall for neglect of duty or misconduct or misuse of money entrusted to him, remove said superintendent from office and recover any moneys due the county and cause him to be fined double the amount, and for embezzlement of such funds may be confined in the penitentiary not less than one year nor more than three years.

Sec. 17. All notices and advertisements for the establishment, alteration or discontinuance of any road, bridge or landing and all notices or advertisements for sales of public roads or bridges to be let to contract under the provisions of this chapter, whether for construction or maintenance, shall, unless otherwise provided, be published for at least two consecutive weeks, next preceding the sale of public roads or bridges to be let at least once in each week, in two newspapers of largest general circulation and of different politics, if there be such within the county.

Sec. 18. With the consent of the owner of the land in which a change of location is proposed to be made given in writing, setting forth the exact changes proposed, the county road engineer may change any public road in his county, except in the case of state aid roads, and turnpikes as provided in section nineteen of this chapter; *provided*, such change does not materially increase the length or grade or require more work to keep the road

in repair, or place the same on worse ground than it was before such change, or render the said road in any respect worse than it was before the change. Any county road engineer who shall make such change otherwise than that prescribed in this chapter shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars. And in case the county road engineer shall make such change in violation of the provisions of this section, the part of the road thus altered, shall not be established as a public road and the former location shall be continued as such.

Sec. 19. The county court of the county may, upon petition, direct any public road, bridge or landing other than a turnpike, bridge or landing in which private citizens may hold a majority of the stock, or any road in which the state shall hereafter invest money according to any plan of state aid, to be discontinued, but notice of every such petition must be published according to the provisions of section seventeen of this chapter, and in addition, notices must be placed at three public places in every district in which any part of the said road or landing may be. Upon such petition, after notice given as aforesaid, the county court shall appoint two or more viewers or a committee of their own body, who, together with the county road engineer, shall view such road or landing and report in writing, whether in their opinion, and if any, what inconvenience would result from discontinuing the same. Upon such report and other evidences, if any, the court may discontinue the road, bridge or landing, taking care in every case, if an established post road not to discontinue the same until another has been established; and in case of a road which may have been established by means of state aid the consent of the state commissioner of public roads must have been obtained in writing, setting forth the changes allowed.

Sec. 20. When any person desires the establishment or alteration of a public road, bridge or landing in any county, or a public road leading from the main public road or roads, he shall petition the county court of the county in which road, bridge or landing is situated, setting forth in his petition specifically, the nature and location of the proposed work, and the county court shall thereupon (and they may do so without such petition in any case in which they deem the interests of the people of the county require it), appoint two or more viewers, or a committee of their own body, who, together with the county road engineer,

shall view the ground and report in writing the advantages and disadvantages which, in their opinion, will result as well to individuals as to the public from the proposed work and the grades and bearings of the proposed road and the facts and circumstances that may be useful to enable the county court to determine whether such work ought to be undertaken by the county, or if the petition be for the establishment or alteration of the public road leading from the main public road or roads, whether such road should be established, stating specifically, whether it would be necessary to take any burying ground, garden, yard, orchard or any part thereof or to injure or destroy any buildings and the probable cost of the work, the names of the land owners whose property would have to be taken or injured, which of them would require compensation and the probable amount to which each of them would be entitled. They shall make careful examination of other routes or locations than that proposed or petitioned for, keeping in view at all times the possible future development of the country and the accommodation of the general traveling public, and shall report in favor of the one they prefer, with the reasons for their preference.

A map giving the grades and bearings of the routes or locations shall be returned with the report. The report may be re-committed by the court, with or without special instructions, or upon petition, or upon their own motion the court may appoint a special committee of viewers, who shall make examination and report according to the provisions of this section.

In any case where it shall appear to the county court that the interests of the general public may be furthered thereby, they shall personally examine the proposed work, or shall appoint a committee of their own body to make examination as herein provided. But in no case shall the county court alter or change the location of any road in which the state shall have invested any money, according to any plan of state aid, without the consent of the state commissioner of public roads.

If the court decide to undertake the proposed work, they shall appoint a day for hearing the parties interested and cause notice thereof to be given to the proprietors and tenants of the property which would have to be taken or injured to show cause against the same. Such notice shall be served on such of them as are found within the county and on any agent therein of any proprietor not so found and by sending another copy by mail,

postage paid, to the last known postoffice address of any party interested who is not found in the county, and by giving notice through the public press as provided in section seventeen of this chapter.

Sec. 21. If the court at any time have sufficient evidence before them to enable them to ascertain what would be a just compensation to the proprietors and tenants, and if such proprietors and tenants are willing to accept what the court deems just, the said court upon such acceptance, being reduced to writing and signed by the proprietors and tenants, may determine to undertake the work.

Sec. 22. Upon hearing the parties interested in an application for a public road, said county court shall decide for or against undertaking the proposed work on behalf of the county. If it decides in favor of the same, and the compensation to be paid to any proprietor or tenant be not fixed by agreement, it shall order proceedings to be instituted and presented in its corporate name in the circuit court of the county, pursuant to the forty-second chapter of the code of West Virginia, to ascertain what will be a just compensation to each proprietor or tenant for the land proposed to be taken, and the said court shall lay a sufficient levy for that purpose. But, when such compensation shall be so ascertained, it shall be at the option of the county court to pay the same or to abandon the proposed undertaking. If it decides to pay the same, it shall lay a sufficient levy for the purpose as provided in chapter thirty-nine of the code of West Virginia. In any case where the petition is for the establishment or alteration of a public road leading from the main public road or roads, the court may refuse to undertake the proposed work, unless the petitioner or some one for him, shall deposit with said county court a sufficient sum to pay all damages and costs sustained by reason of the establishment or alteration of such public road.

In such case, if it seems proper so to do, the court may establish any such public road, upon conditions that the petitioner shall pay all costs and damages as aforesaid, and make and keep in repair such road, and erect and maintain in good repair one or more gates across such public road where the road passes through a fence or fences, as is provided in section forty-three of this chapter; and the court may also impose upon such petitioner, his heirs or assigns, and upon the public such other conditions in reference to such road as the court may deem just. In the event

that any of the conditions, so imposed by the court are not fully complied with, the court at any time, after giving at least sixty days notice to the public and to the petitioner, his heirs or assigns, in such manner as the court may prescribe, may discontinue or abandon such road.

Sec. 23. When it is necessary to build or repair a bridge within the county or across the boundary thereof the county court of the county may contract for the same, or any part thereof, on such terms as may be agreed upon, and take bond and security from the contractors, for the faithful performance of his contract, and pay for the work in whole or in part, out of the county treasury or by issuing bonds or other evidences of debt for the amount as may be agreed upon and to this end they may appoint one or more commissioners or a committee of their own body, who, together with the county engineer shall advertise for and receive proposals and shall make such other order in the premises, from time to time, as shall be necessary and proper.

Sec. 24. In like manner the county court of any county, may contract and pay for making, improving and keeping in order, the whole or any part of any county road within the county. They may permanently improve by the use of asphaltum, brick, stone, block or by macadamizing, or other process of equal merit, the main roads within their county and may contract therefor with any contractor for the use of any of these foregoing systems, and take bond and security in a penalty equal to the estimated cost of the work in question, from any such contractor for the faithful performance of his contract. They may pay for the work done under such contract, in whole or in part, out of the county treasury by special levy to be laid in the manner and form as provided by section six of chapter nine of the acts of the legislature of the special session of one thousand nine hundred and eight, or by issuing bonds or other evidences of debt for the same.

Sec. 25. In case the payment of the cost of any road work done under the provisions of this chapter is to be made by bonds, the county court of the county, upon the petition of fifty legal voters who are freeholders of the county or of any magisterial district, shall submit the proposition for issuance of said bonds to the legal voters of the county or of the magisterial district desiring to be bonded and in which the proceeds of said bonds are to be expended in the form and in the manner prescribed by the laws of the state for the issuance of bonds, at a general, school or

special election and the proposition must receive three-fifths of all the votes cast at such election upon the question, which election shall be called, held, conducted and the results ascertained, bonds issued and provisions made for the payment of principal and interest, provided for in the same manner as is required in section twenty-four of chapter thirty-nine, and sections fifty-seven, fifty-eight, fifty-nine and sixty of chapter fifty-four of the code of West Virginia.

Sec. 26. When it becomes necessary to build or repair any bridge across any stream on the line between two counties, or to construct or improve according to any plan of state aid, or to keep in repair any road or roads between two counties, or along the boundary lines thereof, the county courts of such counties may enter into such agreement therefor, as to them shall seem best, but if they disagree in relation thereto it shall be the duty of the county court of each county to appoint two special commissioners, who, together with the county engineer of each county, shall meet and arrange the matter, and if they should disagree, they shall call to their aid one or more special commissioners from another county to assist them in their decision and whenever a decision is arrived at and if it is confirmed by the court of each county, sitting separately, it shall be binding. If the county court of any county, upon being required so to do, shall fail to appoint commissioners or if either court shall fail in any respect to fulfill its part of the agreement with respect to the work, the remedy by *mandamus* shall lie before the circuit court of the county whose county court is complained of on behalf of the county court of the other county, and the circuit court shall compel the county court complained of, to do what ought to be done in the matter.

Sec. 27. If the county courts shall determine to make the improvements, they shall have prepared plans and specifications of such work, and shall advertise for bids as provided in section seventeen of this chapter in each of the counties, and the contract shall be awarded to the lowest responsible bidder who shall furnish satisfactory security to be approved by said county courts and said county courts voting separately shall approve of the plans and specifications, and shall jointly award the contract.

The commissioners appointed by the county courts as provided in section twenty-three of this chapter, together with the county road engineer of each of the counties, shall constitute a joint committee and such joint committee shall receive the bids at the time

and place specified in the advertisement and shall open and publicly announce the items comprising each bid according to the provisions of section sixteen of this chapter, and the members of the committee from each county shall forthwith report such bids to their respective county courts for action thereon.

Sec. 28. The contract for such work shall specify such share or portion of the costs thereof to be borne and paid by each county court and each county court shall be severally liable for such share or proportion.

Sec. 29. If in the opinion of said county courts, or either of them, it be determined by resolution passed by either of said courts separately, to place in the tax levy for any one fiscal year its share or proportion of the costs of acquiring said lands, doing the work, and making the improvements herein authorized, would be too burdensome on the taxpayers of such county or counties, then it shall be lawful for such county court to issue the bonds of such county according to law, to raise the funds wherewith to defray the cost aforesaid.

Sec. 30. After the completion of the work, the improvement so made shall be maintained by the county court or courts or other authorities of the counties or other political divisions joining in the improvement, who shall bear and pay the same share and cost of maintenance and repair that they severally bore toward the cost of improvement.

Sec. 31. Whenever a road in this state runs in or through two or more counties, and said counties engage in the maintenance and operation thereof in its entirety at joint expense, it may be lawful for the county courts of such counties to pass resolutions separately by each court, stating that public necessity demands the improvement of such road in its entirety or any portion thereof and requesting that it be constructed or improved according to some plan, for the permanent improvement of the public roads by state aid. In such event the county courts of the counties shall proceed, jointly, in like manner and effect as may be provided by law for counties to apply for and receive state aid.

Sec. 32. Whenever any public road or section of road located in any magisterial district in this state has been, or shall hereafter be permanently improved, without state aid, if the construction thereof be a macadamized road or a telford or other stone or brick road so that the same of whatever materials constructed shall, with reasonable repairs thereto, be firm, smooth and



convenient for travel, at all seasons of the year and approved by the state commissioner of public roads, such public road or section of road, upon the petition in writing of twenty-five legal voters of the magisterial district wherein such public road or section of road so improved lies, addressed to and filed with the county court of the county within which the district is situate, accompanied by a map or survey of the public road or section of road so improved, and a copy of the specifications under which such improvements were made, together with proofs showing payment to the contractors for all work done, may be by said county court, by resolution, examined and declared to be a county road, if in the judgment of said county court, said road is of sufficient public importance, and such road or section of road shall, upon acceptance, forever thereafter be a county road and subject to the exclusive jurisdiction of said county court in the same manner as roads built by state aid and the duty of keeping the same in repair shall devolve exclusively upon the county court. More than one public road or section of road in the same district may be included in one petition.

Sec. 33. The county court of the county may cause such of the public roads as are of greatest benefit to the citizens of the county to be divided and laid out in sections of not more than two miles in length, the contract for repairing and keeping in order of which they may sell out to the lowest and best bidder, who shall give bond and security in such amount as the county court may determine, to be approved by the county court and the expenses of construction and keeping in repair of any road so laid out and divided shall be provided for by a poll tax of one dollar, to be laid on all male citizens of the county who have attained the age of twenty-one years and have not passed the age of fifty years, and a tax levied and collected upon all property of the county taxable for state and county purposes.

Sec. 34. When any joint stock company incorporated by this state shall have been formed to construct a road or bridge, wholly or in part in any county, the county court of such county may subscribe for, take, hold and dispose of stock in such company under the regulations, and subject to the restrictions prescribed by law.

Sec. 35. No tolls other than for maintenance of such road or bridge shall be charged or collected for traveling upon any of the public roads or over any of the public bridges of this state, except

those which are now collecting such tolls according to the laws of this state.

Sec. 36. A collector of tolls on any turnpike authorized by law to receive tolls, may refuse to allow any person, animal or vehicle to pass on such road until the lawful toll be paid. If any person, animal or vehicle pass a toll gate on such roads, or other proper place for payment, without paying or tendering the toll, or if any person misrepresent the distance he may have traveled on such road, such person in possession of such animal or vehicle shall be fined not exceeding twenty dollars, and the like penalty shall be incurred when any person, animal or vehicle subject to toll is passed through any private gate, bars or fence for the purpose of evading the payment of toll.

Whoever shall defraud or attempt to defraud the company by evading or attempting to evade the payment of toll for crossing a bridge, or aid another to do so, shall for every such offense, upon conviction, be fined ten dollars.

Whoever shall obstruct or cause to be obstructed, any walk or driveway to, or upon a bridge, or shall loiter upon or about the entrance upon the same, or in any wise interfere with the gatekeeper or passengers upon a bridge, shall, upon conviction, be fined ten dollars.

A gatekeeper on any toll bridge shall keep such money of small denomination on hand, as may reasonably be required in the ordinary course of the business, for making change for passengers, and it is the duty of passengers to offer money for passage of a denomination as nearly as possible to the amount charged for such passage.

This section shall not apply to persons now having a lawful right to pass on such roads without the payment of toll.

Sec. 37. If any person without authority from the superintendent of said road, or person acting as agent thereof, shall remove, injure or deface any of the milestones or posts, parapets, walks, culverts, bridges, masonry of any kind, gates or toll houses belonging to said road authorized by law to receive tolls, or shall turn any stream of water from its regular course toward or upon such road, so as to injure the same, or shall obstruct any of the gutters, drains or culverts of such road, or shall connect any public or private road with such road, without securing such road from injury by reason of such connection, or by the flow of water at the place of such connection, or shall place or leave on such

road any earth, ashes, stone or other obstruction to the travel and use of such road, or shall so place or leave thereon any vehicle as to interfere with such travel, or shall, fast lock or rough lock either of the wheels of any vehicle upon a part of the road not covered with ice, except the same rest on an iron shoe at least six inches wide, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than fifty dollars.

Sec. 38. On all turnpikes now owned wholly or in part by individuals or corporations in this state, tolls not exceeding the following rates may be received in every section of five miles which has been completed, to-wit: For a single horse, mare, gelding, mule, jack or jannet, three cents; and for every horse, mare, gelding, mule, jack or jennet, in addition, one cent, if the same be not hitched to any vehicle; for twenty sheep or hogs, five cents; and for twenty cattle, ten cents, and so on in proportion for a greater or less number; for a riding carriage, whether two or four wheeled, if the road be a macadamized road or a brick road or some other permanently improved road, ten cents; but if not macadamized or not a brick road or other permanently improved road, five cents; and for a cart or wagon, if the tires of the wheels are less than four inches wide, three cents for each animal drawing it. For a fractional part of a section tolls may be received bearing the same proportion to the tolls for a full section that the said fractional part bears to such full section; *provided*, that when the toll, from the fractional part would be less than one cent, they may charge and receive one cent; *provided, further*, that all coaches, carriages, vehicles and horses used by persons in going to and from divine worship, funerals and grist mills for the purpose of having grinding done, shall be exempt from tolls.

Sec. 39. The said tolls may be demanded and collected of every person passing the toll gate, whether he shall have traveled the whole or only a part of the section or fractional part; *provided*, that the said toll road or turnpike shall be made so as to conform to the following specifications: All roads or turnpikes shall have a smooth road bed of not less than fifteen feet in width, exclusive of ditches, and shall be well side-ditched and drained. All cross-drains shall be underdrained or riprapped when necessary. All running streams requiring bridges of fifty feet in length or less, and such others as the county court of the county may direct, shall have a bridge or culvert across the same sufficiently strong and

sufficiently wide to insure safe passage to all kinds of vehicles; *provided, further*, that no toll shall be collected unless said toll road or turnpike be constructed in accordance with this section, but no such tolls shall hereafter be imposed and collected in Ohio county, Jefferson county or in Brooke county; and *provided, further*, that any citizen of this state may bring an action or suit to prevent the unlawful collection of such tolls.

Sec. 40. Whenever the collection of tolls for traveling over or upon any toll road or turnpike has been abandoned by any county, person, company or corporation, or is prevented by law or by final order of any court having competent jurisdiction, or whenever any of the main public roads are improved under the provisions of section twenty-four of this chapter, it shall be the duty of the county court of the county wherein such road or turnpike, or any part thereof, is located, to keep the same macadamized and piked, and in good repair, and shall pay for the work and all expenses incident thereto out of the county treasury.

Sec. 41. Any person or persons who may desire to do so, may build a sidewalk, composed of plank, gravel, concrete or other suitable material, along the side of any public road in this state; *provided*, that the said walk does not exceed thirty-six inches in width and that the construction and repairing of the same and the use thereof shall be without expense of any kind to the public or to any person who may want to use the same; and, *provided, further*, that all persons who may desire, be permitted to use the same and that said sidewalk does not in any way interfere with the traveling public on any public road, or with the passing upon or over, by the traveling public to and from their places of business; *provided, further*, that if it is desired to build any such walk in a city or corporate town, the consent of the council of such city or town shall be obtained before such walk is built.

Sec. 42. Any person or persons who shall in any manner destroy, take up, or in any way injure any sidewalk already constructed, or that may hereafter be constructed according to the provisions of the foregoing section, and shall fail to repair the same, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not less than five nor more than fifty dollars.

Sec. 43. The county court of a county may, upon petition, permit gates to be erected across any county road therein, or cause any gate erected across any county road to be removed, but notice

of every petition for that purpose shall be first advertised according to the provisions of section seventeen of this chapter and notices shall be posted at three places in the vicinity of the gate proposed to be erected or removed, at least three weeks before the meeting at which such order is made.

Sec. 44. If a county court wilfully fail or refuse to perform any duty required of such court by the provisions of this chapter, every member of such court concurring in such failure or refusal shall be guilty of a misdemeanor, and upon conviction thereof before the circuit court of the county shall be fined not less than ten nor more than one hundred dollars, at the discretion of the court.

Sec. 45. It shall be the duty of the clerk of the county court to keep on convenient file or in books prepared for such purpose, a complete record of all titles to rights of way, all maps, plats and surveys, and all discontinuations of public roads within the county, which are now, or may hereafter be reported to the county court of the county.

Sec. 46. The owner or occupier of every dam shall, as far as the road passes over the same, keep such dam in good order at least fourteen feet wide at the top; and also keep in good order a bridge of like width over the pier-head, flood gates, or any waste cut through or around the dam; and shall erect and keep in good order, a strong railing on both sides of such bridge or dam. If he fails to comply with this section, he shall pay a fine for every twenty-four hours failure, of two dollars, but the fine shall not in any one prosecution exceed fifty dollars; and where a mill dam is carried away or destroyed, the owner or occupier thereof shall not be henceforth subject to such fine until one month after the mill shall have been put in operation. And every owner of a dam hereafter built, which dam, by the backing of the water or otherwise, obstructs any public road, or if any race or ditch connected therewith shall materially obstruct any such road, shall, whenever it may be necessary for the safe and convenient crossing of the same, or the pond created thereby, build and keep in repair over and across the said dam, pond, race or ditch, a bridge of like kind and description as hereinbefore specified, and for the failure to do so every such owner or occupier shall be fined as hereinbefore provided.

Sec. 47. Any person owning land upon a water course may erect a wharf on the same, or a pier or bulkhead in such water

course, opposite his land, so that the navigation be not obstructed thereby, and so that such wharf, pier or bulkhead shall not otherwise injure the private rights of any person. But the county court of the county in which such wharf, pier or bulkhead shall be, after causing ten days' notice to be given to the owner thereof of its intention to consider the subject, if it be satisfied that such wharf, pier or bulkhead obstructs the navigation of the water course, or so encroaches on any public landing as to prevent the free use thereof, may abate the same.

Sec. 48. Any person desiring the privilege of erecting a wharf at or on any public landing, may present a petition to the court of such county for such privilege; but notice of the petition, or his intention to present the same, must be posted at the front door of the court house and at three public places in the district in which it is proposed to erect such wharf, three weeks at least before the petition is acted upon. The said court upon petition and notice, may grant such privilege upon such conditions and limitations, and fix such rates and charges for wharfage as it sees fit. But it may at any time afterwards, upon ten days' notice to the owner of such wharf, or his tenants, revoke such privilege or alter such conditions or limitations, or regulate the rates of charges.

Sec. 49. Any person who sustains an injury to his person or property by reason of a public road, bridge, street, sidewalk or alley in any incorporated city, town or village, being out of repair, may recover all damages sustained by him by reason of such injury, in an action on the case in any court of competent jurisdiction, against the county court, city, town or village in which such road, bridge, street, sidewalk or alley may be, except that such city, town or village shall not be subject to such action, unless it is required by its charter to keep the road, bridge, street, sidewalk or alley therein, at the place where such injury is sustained, in repair. If it is not so required, the action and remedy shall be against the county court. When judgment is obtained against a county court, such court shall levy upon the taxable property of the district in which such injury is sustained, a sufficient sum to pay such judgment with interest and costs, and the cost of collecting the same, and when it is obtained against a city, town or village, the proper corporate authorities thereof shall lay such levy on the property subject to taxation in such city, town or village. And in case of a failure by either so to do, or to pay

the judgment as required by law, the circuit court of the county shall compel the laying of such levy, or the payment of such judgment, or both by *mandamus*. The summons in such case against the county court, shall issue against such court and be served as provided in chapter thirty-nine of the code of West Virginia, and if the case be against a city, town or village, it shall issue against the same by its corporate name and be served on the mayor, recorder, treasurer or two councilmen.

Sec. 50. Any person who may be injured as aforesaid by reason of a turnpike, road or bridge, belonging to any company or person, or to any county in its corporate capacity, being out of repair, may recover all damages sustained by him by reason of such injury, in the manner prescribed in the preceding section, against such company, person or county, or against the lessee for the time being of any such road or bridge. Any judgment against a city, town or village or county under this section, may be enforced by the circuit court by writ of *mandamus*. The enactment of this section shall not affect any action or suit now pending for any such company as is mentioned herein, but the same may be prosecuted and judgment therein enforced with like effect, as if this section had not been enacted.

Sec. 51. There is hereby created in the several counties of the state of West Virginia, the office of county road engineer. The county court in each of the counties in this state, shall, on or before the first day of October, one thousand nine hundred and nine, and biennially thereafter, appoint as county road engineer, some practical road builder or civil engineer, who shall be competent to establish grades and keep the roads and records as provided by law. Such county road engineer so appointed, shall serve for a period of two years from and after the first day of October and until his successor is appointed and qualified.

Vacancies in the office of county road engineer shall be filled by appointment for the unexpired term by the county court of the county at their next session. The county road engineer shall receive such compensation, either by salary or per diem, as may be fixed by order of the county court of the county. *Provided*, such compensation shall not be less than three hundred dollars nor more than fifteen hundred dollars per annum.

If thought advisable by the county court, the county surveyor of the county elected at the last preceding general election may receive such appointment, *provided*, he be competent as provided

by this chapter; and for such services he shall receive the compensation fixed by the county court as provided in this section, in lieu of all fees, except such fees as are allowed by law for his services as county surveyor.

In the event that the county road engineer cannot properly perform all the duties of his office, he may, with the approval of the county court, appoint an assistant who shall receive such compensation as may be fixed by the court, and who may be discharged at any time by the county road engineer.

It shall be the duty of the county clerk to give written notice to the appointees provided in this chapter, of their appointment as soon thereafter as practicable and each person so appointed, shall, within ten days after having been notified of such appointment, qualify by giving such bond as the court may direct for the faithful performance of his duties and by taking and subscribing to the oath prescribed by the fifth section of the fourth article of the constitution of the state, a copy of which shall be filed in the office of the clerk of the county court.

The county road engineer shall have office room in the court house of the county and when not otherwise occupied by his official duties, as hereinafter provided, he shall work according to the direction of the state commissioner of public roads in the survey of the roads of his county, indicating the necessary changes to be made therein and making maps of the work.

Sec. 52. The county road engineer may be removed at any time by the county court of the county upon its own volition or upon complaint of the commissioner of public roads, for incompetency, malfeasance or misfeasance in office, upon written charges after a hearing, of which ten days' notice shall be given by serving a copy of such charges upon such county road engineer.

Such hearing shall be held in the office of the county court of the county. If upon such hearing, it appears that such charges are sustained, the county court of the county shall remove such county road engineer and forthwith serve notice thereof by mail, upon the county road engineer. Such notice shall state specifically the grounds for such removal. The records of the proceedings shall be filed in the office of the county court.

Sec. 53. The county court of the county shall within ten days after such removal appoint a county road engineer to fill the vacancy caused by such removal. The person so appointed shall hold office for the unexpired term, or until the entry of a



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final order of a court of competent jurisdiction determining that the original county road engineer was wrongfully and illegally removed, and directing his reinstatement.

Sec. 54. If any county road engineer neglects or refuses to perform the duties of his office he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding one hundred dollars and shall be subject to the same penalty if he refuses or neglects to cause contractors to perform their duties as provided in this chapter.

Sec. 55. The county road engineer appointed as provided in section fifty-one of this chapter shall co-operate with the commissioner of public roads and at the same time act as the agent of the county court of the county for which he was appointed. He shall, subject to the rules and regulations of the state commissioner of public roads, or of a county court of the county, have general charge of all the public roads and bridges within his county, excepting turnpikes or bridges owned or maintained and operated wholly by some citizen or company and as otherwise expressly provided in relation to incorporated cities, towns and villages or other localities, and shall see that the same are improved, repaired and maintained as provided by law and have the general supervision of the work of constructing, repairing and improving public roads and bridges in his county; superintend the construction and improvement made upon the roads and bridges under the provisions of this chapter, and other work of like nature undertaken by the county court of the county and shall make reports thereon from time to time as the county court may direct; advise and direct those employed by him how best to repair, maintain and improve such roads and bridges; examine the various formations and deposits of gravel and stone in his county for the purpose of ascertaining the materials which are most available and best suited for the improvement of the public roads therein; and when requested by the state commissioner of public roads, submit samples of such materials and deposits and make a written report in respect thereto; establish or cause to be established such grades and recommend such means of drainage, repair and improvement as seems to him necessary, whenever requested by the county court. Approve plans and specifications and estimates for the erection and repair of bridges and the construction and maintenance of public roads; report to the state commissioner of public roads annually, on or before the first

day of July in each year, in relation to the roads and bridges in his county, containing such matter and in such form as may be prescribed by the commissioner.

Additional reports shall be made from time to time when requested by the commissioner, in respect to such matters as may be specified by him.

Whenever a public meeting in the interest of good roads for a county or district shall have been called by the state commissioner of public roads, the county engineer shall cause due notice to be given through the public press as is provided in this chapter for the advertisement of roads to be let to contract.

Inspect or cause to be inspected, if so directed by the county court, each public road or bridge during its construction or improvement and certify to the county court the progress of the work and whether or not the work is being carried on according to law and report to the county court any irregularity of the contractor, or any failure on his part to comply with the terms of the contract; and perform such other duties as may be prescribed by law or the rules and regulations of the state commissioner of public roads.

Sec. 56. On or before the first day of January one thousand nine hundred and ten, and annually thereafter, the county road engineer shall prepare a map of the county showing the district lines and his recommendations as to the size and boundary of the precincts. He shall also advise the county court as to what road work, in his opinion should be let under contract as hereinafter provided.

The county court in each of the counties of this state shall, on or before the first day of January one thousand nine hundred and ten, proceed to divide each magisterial district into two or more road precincts of as nearly as practicable equal extent, numbering the same.

Sec. 57. By and with the advice and consent of the county court, the county road engineer shall employ such agent or agents in the different road precincts of the county, as may be necessary to carry out the provisions of this chapter and may summarily discharge such employees at pleasure. Such employees shall perform service upon the public roads of the county in whatever station employed, according to the direction and in the manner prescribed by the county road engineer. Such employees may receive such compensation per day as may be determined by

the county court of the county. *Provided*, that every able-bodied man employed under the provisions of this chapter, for service on the public roads, shall receive the prevailing wages of the vicinity in which the work is to be done, which shall not be less than one dollar nor more than two dollars per day, according to services rendered, except in the case of assistant engineers required for special work, who shall receive not more than five dollars per day.

Sec. 58. It shall be the duty of the county road engineer within thirty days after the first day of January next after his appointment, and every year thereafter, to lay out and divide or cause to be laid out and divided, all the county roads in the respective road precincts, into sections not exceeding two miles in length, which he shall number and describe in a book kept by him for that purpose. He shall distinctly specify therein what he shall deem necessary for the improvement and keeping in repair each section of said county road for the period of one year; and may also recommend the establishment and construction of such new roads as he may think for the benefit of the general public.

Sec. 59. It shall be the duty of the county road engineer to call a meeting in each magisterial district in his county, each year, of all the road employees within the district. Such meeting shall be open to the general public and shall be held at a time designated by the county road engineer, between the twentieth day of February and the thirtieth day of March.

At a meeting of the road employees, the county road engineer shall instruct them in the best and most economical plans for working and improving the roads and in expending the district road funds and if practicable adopt a uniform system of road work for the county. At such a meeting it shall be the duty of the county road engineer to expose for sale the public roads of each precinct, one section at a time, unless otherwise directed by the county court, such of the sections of road in each road precinct as he may elect, to the lowest responsible bidders, commencing as soon as practicable after the twentieth day of February next after the beginning of his term of office, for a period of time previously determined as provided in the last section, but no county road engineer shall be a bidder or become a purchaser either directly or indirectly, of any section or sections offered for sale, or proposed to be worked. Additional sections may be sold in like manner annually thereafter, the sales to continue from day to day

until the designated sections are all sold or have been offered for sale, of which sales notice shall be given by posting of hand bills at not less than two of the most public places of each road precinct and by advertising in two county papers of general circulation in the county, according to the provisions of section seventeen of this chapter.

All sales made in the manner and form provided for in this section, shall be reported by the county road engineer to the county court of the county, at a special meeting held after such sales are made and the county court of the county at such meeting shall have the right to reject any bid that may by them be deemed too high, or may be objectionable from any other good reason.

Sec. 60. If any section or sections be not sold at any sale or sales, made under the provisions of this section, for want of a bidder or because of the rejection of any bids as provided for in this chapter, it shall be the duty of the county road engineer to sell such section or sections or new roads at private sale or have the same kept in repair or such new roads opened, as provided in this chapter, or in any other manner the county court may direct.

To this end he may employ and procure all necessary hands, horses and material for the proper discharge of his duties, at such compensation as the county court may determine according to the provisions set forth in this chapter.

It shall be unlawful for any county road engineer to appoint or employ, under the provisions of this section, as a laborer on the public roads, his father, son, son-in-law, grandson, brother, brother-in-law, nephew or first cousin by blood; *provided*, a sufficient amount of other efficient labor can be secured within the vicinity.

Each county road engineer shall report to the county court at each regular term thereof and at such other time as the court may require, a full itemized statement of the expenditures made by him since his last report, giving number and names of hands and number of horses employed by him, the time each was employed, the amount paid to or for each, and as to such other matter as he may deem necessary or the court may require. Such statements of account shall first have been prepared according to the public accounting laws of this state and have been certified to by the agent or agents of the county road engineer having charge of the work.

Sec. 61. Any contractor may contract for one or more sec-

tions of road, and in purchasing a contract or contracts at any sale herein provided for, shall give bond with security to be approved by the county court of the county, in a sum equal to the estimated cost of the work in question, to be fixed by the said court for the performance of every contract so purchased, and further conditioned to require that every such contractor or contractors shall put his section or sections in good repair on or before July the first of each year, and keep the same in good repair.

Sec. 62. It shall be the duty of the contractor or contractors to sign his or their name or names, as the case may be, and write the sum he or they shall receive for repairing his or their section or sections in the book kept by said county road engineer mentioned in section sixty of this chapter under the description thereof, and it shall be the duty of any contractor or contractors to keep his or their section or sections in repair in conformity to the contract.

Sec. 63. If any citizen of a road precinct complain to the county road engineer thereof that any contractor or contractors therein have neglected or refused to keep his or their section or sections of road in repair in accordance with the specifications, it shall be the duty of said county road engineer to cause examination to be made within five days after such complaint shall have been made, and if upon such examination he deems the complaint well founded, he shall give notice thereof in writing to the party so complained of and he shall accompany said notice with a request that the party so complained of shall within a reasonable time thereafter, put his or their section or sections in repair in accordance with the specifications; and if the said contractor or contractors shall neglect or refuse to repair the same, it shall be the duty of the said county road engineer to cause the same to be put in repair and the cost of repairs shall be certified to the county court, and the amount so certified shall be deducted from any money or moneys allowed the contractor or contractors for opening and keeping in repair such section or sections and the county court shall issue its warrant on the sheriff for such amount of money certified, and in favor of such person or persons as shall have been employed to put such section or sections in repair. And if the amount under the control of the court as aforesaid is not sufficient to pay for the repairs so caused to be made by the county road engineer, then the additional cost thereof shall be recoverable from the contractor or contractors by said county road

engineer, as other claims of equal amount are now recoverable by law.

Sec. 64. It shall be the duty of the county road engineer of the county, as soon as practicable after the sale of said county roads or any newly established or altered roads, and annually thereafter, to ascertain and report in writing immediately after the ascertainment to the county court of the county, the amount of money necessary to open and keep in repair the public roads of each of the magisterial districts of the county payable during the next ensuing fiscal year, and it shall be the duty of said court to carefully examine such reports and the estimates therein contained, and to make such alterations and corrections therein as the court may think proper; and the court shall at their first stated meeting thereafter, at which the said county court may be required to levy the estimates covering the county debts and liabilities, provide for the amount as reported to them by the county road engineer as aforesaid, as altered and corrected by the court, if such reports are altered and corrected by them, and other expenses pertaining to the same, by levying a tax of one dollar on every male inhabitant of said district who has attained the age of twenty-one years, and not passed the age of fifty years, as provided in section thirty-three hereof; *provided*, that persons afflicted by bodily infirmity may be exempted by said court from this capitation tax. The balance after deducting said capitation tax and estimated delinquencies, shall be levied upon the property of said district taxable for state and county purposes and shall be collected and disbursed in the same manner. The said levy shall in no case exceed the limitation which is now or shall hereafter be set by law for such purposes. Such tax shall be a lien on the real and personal property on which it is imposed in like manner and effect as county taxes, and shall be collected and accounted for by the sheriff in the same manner as county taxes are collected and accounted for.

It shall constitute a road fund to be expended, in the district in which it may be collected, in the construction and repair of the roads and bridges therein.

Sec. 65. Any person who has paid his capitation and other taxes as herein provided, in any year in one road precinct shall not, if he remove into another precinct be required again during the same year to pay such taxes therein.

Sec. 66. For extending the road levy on the land and property

books the court shall allow the assessor a reasonable compensation, payable out of the county treasury; and for collecting said levy, the sheriff shall be entitled to the same commission as for the collection of state taxes.

Sec. 67. Delinquent list of taxes uncollected under the provisions of this act shall be returned and disposed of as school and other district levies are returned and disposed of according to law.

Sec. 68. Any balance of road fund remaining in the hands of the sheriff at the end of the fiscal year shall remain to the credit of the district for which it was collected.

Sec. 69. It shall be lawful for any contractor or contractors who may remove out of any precinct, if he so desire, to yield up to the county road engineer the unexpired portion of his or their contract or contracts by giving notice thereof in writing, at least twenty days before the time for making the annual sales of sections of roads as provided for in this chapter, and the section of road so yielded up and any section of new road that may have been opened may be sold at private sale by the county road engineer for the time intervening until the next annual sale of roads provided for in this chapter; *provided*, that in case of death or removal out of the district, the county road engineer shall cause to be paid in the same manner as other claims are required to be paid, to contractors or to the representatives of such person so deceased or to such person so moving out of the district, such portion of the money specified in their respective contracts, as they may believe them justly entitled to.

Sec. 70. All claims of any contractor or contractors, or others which may under the provisions of this chapter be due to such contractor or contractors or other persons, shall, when certified to by the county road engineer, be presented to the county court at the proper session thereof and if by them found correct, shall, upon the order or warrant of said court, signed by the president and clerk thereof, be paid by the sheriff; *provided, further*, that it shall be the duty of the county road engineer to furnish the county court at its session next preceding November first, in each year, with a certified statement showing one-half of the amount of each claim so due each contractor or contractors, and said one-half of the amounts due each contractor or contractors as aforesaid, may upon the order or warrant of said court, signed by the president and clerk thereof, be paid by the sheriff on or after that

date (November first), and in like manner payment of the remaining one-half of each claim, shall be provided for and made by April first, next succeeding, except, in contracts for the construction of new roads, the payment shall be conditioned as set out in the original contract, with the reserve of twenty per cent of payments on all estimates until the work is completed; *provided*, that no county road engineer shall certify the claim of any such contractor or contractors until, upon examination, he shall find that the provisions of the contract have been strictly complied with.

Sec. 71. It shall be the duty of each county road engineer to see that all the roads in his county heretofore established, or that may hereafter be established as public roads, are put and kept in as good repair as may be, within the means at his command as herein provided. He shall cause such roads and bridges to be kept in repair and free from obstructions, and cause the public roads and bridges within the county to be inspected once in every six months, and at such other times as the county court may prescribe, and if he find that any contractor or contractors have neglected or refused to fulfill his or their contract or contracts, he shall give notice thereof and enforce the same in the manner provided in section ninety-nine of this chapter; cause to be constructed and kept in repair sluices and culverts and cause waterways, bridges and culverts to be kept open; cause loose stones lying in the beaten track along the public roads to be removed at least one time in each year, between the first day of April and the first day of June. The stones so removed shall be carried to some place from which they will not work back or be brought back onto the track by road machines or other implements used in repairing the roads.

Cause noxious weeds, growing in the bounds of the public road to be cut at least twice in each year, once in the month of June and once in the month of August.

Cause such roads as shall have been laid out but not sufficiently described and such as shall have been used for public roads for a term of ten years but not recorded, to be ascertained, described and entered on record in the county clerk's office of the county. Cause to be opened and made all new county roads and alterations of former roads ordered by proper authority.

Cause to be placed and kept at the forks or crossings of every county road a guide board, on which shall be stated in plain



letters the most noted place to which each road leads and number of miles thereto.

Across every stream where it is necessary and practicable, he shall cause to be placed and kept a sufficient bridge, bench or log for the accommodation of foot passengers. Where any important bridge is necessary and it is practicable for him to have it constructed with the money which is at his disposal, by virtue of his office, he shall cause it to be made safe and convenient and at least fourteen feet wide, with a railing not less than three feet high on each side.

When a public road is suddenly obstructed by the falling of rock or timber, landslides, or other cause, or a public bridge is from any cause rendered unsafe, if the section of road obstructed or the bridge rendered unsafe, is under contract for continuous maintenance as provided in this chapter, he shall immediately give notice thereof to the contractor or contractors on whose section of road the obstruction may be, whose duty it shall be within twenty-four hours, or as soon as practicable thereafter to remove such obstructions, and in case no effort has been made by the contractor or contractors within said twenty-four hours, to remove such obstructions, he shall immediately employ such persons, machinery and teams as may be necessary and without avoidable delay, cause the obstructions to be removed from the public road, or the bridge to be made safe, and the cost thereof shall be recoverable from the contractor or contractors aforesaid, as provided in section sixty-five of this chapter. But if the said section of obstructed road be not under contract, the said county road engineer shall immediately remove the obstructions in like manner and the cost thereof shall be a district charge, payable by the county court out of the road fund of the district.

Cause all roads which are to be constructed or improved as public roads to be inspected when directed by the state commissioner of public roads, or by the county court, for the purpose of securing preliminary information to be used in preparing the plans and specifications for such roads, and mark, or in some substantial way, designate the portion of such roads as may need special care and attention. He shall report to the county court or to the commissioner of public roads, as the case may be, the condition of such road and submit therewith, such recommendations with respect thereto, as may seem expedient.

Report annually to the state commissioner of public roads, on

such date as may be prescribed by him prior to the first day of September, in relation to the roads and bridges in the county, containing the matter and in the form to be prescribed by the commissioner.

The county court or the state commissioner of public roads may require additional reports on such roads whenever it seems to either of them to be necessary. He shall attend public meetings, called by the state commissioner of public roads, held within the county, after receiving notice thereof.

Sec. 72. The county road engineer may purchase for the use of the magisterial districts of the county, or for the county, stone crushers, road rollers, traction engines, road machines for grading and scraping, tools and other implements, which shall be paid for from moneys levied and collected and belonging to the district or county road fund, or from the proceeds of bonds issued and sold for such purposes as provided by law.

Nor more than five hundred dollars shall be levied and collected in any one year in any magisterial district, for the purchase or repair of stone crushers, road rollers, traction engines, or road machines for grading and scraping, tools and implements, unless duly authorized by a vote of the people of the district.

No contract for the purchase of stone crushers, road rollers or traction engines, shall be valid unless the county court shall have approved the same and endorsed its approval on such contract by the signature of the president and clerk thereof. All road machines, stone crushers, steam rollers, tools and implements, owned either by a county or by a magisterial district or districts therein, when this act goes into effect shall be used in such district or districts for which such machinery was purchased, in such manner and in such places as the county road engineer shall designate, until the county court of the county shall have adjusted the matter. They shall be under the care of the county road engineer and shall be cared for by him at the expense of the district or county to which they belong.

He shall cause to be made annually, written inventory of all such machinery, tools and implements, indicating each article and the value thereof and the necessary costs of all repairs thereto and deliver the same to the county clerk of the county on or before October thirty-first in each year, and shall at the same time cause to be filed with the county clerk his written recommendation as to what machinery, tools and implements

should be purchased for the use of the district, and the probable cost thereof. He shall provide a proper place or places for housing and storing all machinery, tools and implements, owned by the district and cause the same to be stored therein when not in use.

Sec. 73. He may lease or hire stone crushers, road rollers, traction engines, etc., at a rate that shall not exceed five dollars for the stone crushers and seven dollars for a traction engine or road roller for each day that the stone crusher, steam roller or traction engine is actually in service upon the public road. The expense thereof shall be paid by the county court in like manner as other such claims are paid by it out of the moneys belonging to the district road fund for the repair and improvement of the public roads of said district.

Sec. 74. The county road engineer may, with the approval of the county court of the county, purchase of the owner of any gravel bed or pit, or stone quarry within the county, gravel or stone for the purpose of grading, repairing or otherwise improving the roads of the county, at a price per cubic yard, to be approved by the county court. If such county road engineer cannot agree with any such owner for the purchase of such gravel or stone, he may, with the approval of the county court, acquire by condemnation the right to take or use such gravel or stone, and to remove the same from such bed, pit or quarry for the purpose of grading, repairing or otherwise improving such roads, together with the rights of way to and from such bed, pit or quarry for the purpose of such removal. No such gravel or stone shall be taken by condemnation, within one thousand feet of any house or barn, or from any lawn, orchard, or vineyard. The purchase price of such stone or gravel and the damage awarded in such condemnation proceedings, together with the costs and expenses thereof, shall be a county charge and paid out of the moneys collected therefor as provided by law.

If the county shall abandon for a period of three years any right acquired under this section, to take or use the gravel or stone from any such bed, pit or quarry, or if the county road engineer shall cease to use the same for the purpose for which it was acquired, the right thereto shall cease and the ownership thereof shall revert to and become invested in the owner of such bed, pit or quarry, or his heirs or assigns, except where the county court has by purchase acquired title to the fee of any land or

lands, it shall remain and be vested in the county until disposed of by the county court.

Sec. 75. Obstructions within the meaning of this chapter shall include trees which have been cut or have fallen either on adjacent land or within the bounds of the public roads in such manner as to interfere with travel therein; limbs of trees which have fallen within the public road or branches of trees over-hanging the public road, so as to interfere with travel therein; land slides, carcasses of dead animals, lumber, wood or logs piled within the bounds of the public road, machines, vehicles, and implements abandoned or habitually placed within the bounds of the public road, fences, buildings or other obstructions within the bounds of the public road, earth, stone or other material placed in any ditch or waterway along the public road; telegraph, telephone, trolley or other poles and wires connected therewith, erected on the public road in such way as to interfere with the use thereof, or any other thing which will prevent the easy, safe and convenient use of such public road for public travel.

Sec. 76. It shall be the duty of the owner or occupant of land situated along the public road to remove all obstructions within the bounds of the road which have been placed there either by himself or by his consent.

Sec. 77. It shall be the duty of all telephone, telegraph, electric railway or other electrical companies, to remove and reset, telephone, telegraph, trolley and other poles and the wires connected therewith, when the same constitute obstructions to the use of the public road by the traveling public.

Sec. 78. It shall be the duty of all pipe line companies whose lines shall have been laid across or along any public road in this state for the purpose of transporting any natural gas, oils, or water or any other substance, to fill up all excavations made thereby and to make the public road in all respects as good as it was before the excavation was made and to keep the same. If such obstructions are not removed or such poles or wires are not removed or reset, or such excavations are not properly filled and maintained, within thirty days after the serving of a notice, by the county road engineer personally or by mail, upon such owner or occupant or upon such company at its principal place of business or an agent of the company within the county, requesting the same to be done, the county road engineer shall cause such obstructions to be removed and such poles and wires to be reset and

such repairs on the excavation to be made as may be necessary to place the same in its original condition. The expenses thereby incurred shall be paid, in the first instance, out of the moneys levied and collected and available therefor and the amount thereof shall be charged against such owner, occupant or company and levied and collected, as provided in section seventy-nine of this chapter.

Sec. 79. The county road engineer shall assess the costs of removing obstructions and removing and resetting poles and wires pursuant to sections seventy-six, seventy-seven and seventy-eight of this chapter, against the owner, occupant or company neglecting to perform their duty imposed by the sections above referred to.

Such county road engineer shall serve personally or by mail, upon such owner, occupant or company, a written notice stating that, at the time and place specified therein, he or his agent will assess such costs against the owner, occupant or company neglecting to perform such duty. Such notice shall be served at least ten days previous to the time specified therein. If directed against a company, it may be served upon it at its principal place of business or upon any agent of the company within the district or county. At the time and place so specified he shall hear the parties interested and shall thereupon complete the assessment, stating therein the name of the owner, occupant or company, the amount assessed against him or it and shall return such assessment to the county court of the county who shall cause the amount stated therein to be levied against the owner, occupant or company, and any uncollected tax shall be a lien upon the property affected. The amount so levied shall be so collected as other taxes levied by such court, and shall be paid into the district road fund to be applied in reimbursing the fund from which such cost was defrayed.

Sec. 80. Any person who shall kill a tree and leave it standing within a distance of fifty feet of any public road or without lawful authority, shall wilfully break down or destroy any bench, or log placed across a stream for the accommodation of travelers, or destroy, injure, deface or alter any guideboard, milestone or milepost or obstruct or injure any road or any ditch made for the purpose of draining a road, or injure any statue, monument, chair or other seat, or any lamp or lamp post, constructed or being in any public road, space or park, or any railing or fence erected for public use or enclosing any such space or park, or any walk

or crossing for foot passengers, or any sewer, curbing or paved gutter, shall be guilty of a misdemeanor and upon conviction be fined not less than ten nor more than fifty dollars.

Sec. 81. Any person who shall drive or ride on or over a bridge faster than a walk shall be fined five dollars. The county court of any county may prescribe, by an order, what number of stock of any kind may be driven over any bridge within their county at any one time; but in every such case they shall cause a printed copy of such order to be kept posted in a conspicuous place at every bridge to which the same is applicable.

Every person violating any such order, posted as aforesaid, or who shall tear down, alter or deface the same, except when ordered by such court to do so, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than ten nor more than fifty dollars.

Sec. 82. Any person who shall use on any public road not covered with ice a vehicle with a chained wheel, unless the same rests upon an iron shoe, at least six inches wide, shall be fined not more than five dollars. Every person who shall draw upon the public roads any log or stone with the end thereof dragging on the ground so that the road shall be injured thereby and shall not immediately put such road in as good repair as before, shall be fined not more than five dollars, in excess of the costs of repair of said road.

Sec. 83. The fines imposed under this chapter shall accrue in the case of a public road or bridge, to the county court of the county and be paid and applied as provided in section eighty-six of this chapter; and in case of a road, turnpike or bridge owned by a company or person, shall accrue to such company or person.

Sec. 84. Any driver of a vehicle meeting any other vehicle on a road or bridge, shall reasonably drive to the right, if the width thereof will permit, so that they may pass each other without interference. And when a vehicle is overtaken by another vehicle, the driver of which desires to pass the other, the driver of the former upon being informed of such desire, shall bear to the right, and the driver of the latter to the left, until the latter shall have passed. Any driver failing to do so shall forfeit two dollars.

Sec. 85. If any horse race be run on any public road or bridge, the rider of any horse in such race, the owner of any horse if he consent to such race, and each person who shall bet on such race shall be fined not less than ten dollars.

Sec. 86. No fine imposed by this chapter shall bar any action for damages or breach of contract. Except when it is otherwise specially provided, all fines imposed shall accrue to the county court of the county, and be paid to the sheriff of the county, to be applied to the construction, improvement and repair of public roads, bridges and landings in the district in which the offense was committed.

Sec. 87. No trolley line or electrical railway shall be constructed upon the road bed of any of the public roads of this state, except the rails of the same be of the flat or "L" shaped type so that wagons and other vehicles may with safety travel thereon.

Sec. 88. Every railroad company heretofore or hereafter incorporated, which has by the building of their road, or otherwise, obstructed, or shall hereafter obstruct any public road, shall as far as possible put the road so obstructed in as good condition at every crossing of said railroad as it was before the obstruction.

Sec. 89. The circuit court of the county in which is any public road, or any portion thereof, taken for railroad purposes by any other corporation than a street railway company, unless such public road or portion thereof is in an incorporated city, town or village which has the control of its roads, streets and alleys, or has been constructed since such railroad, may, upon petition of any party interested, served upon said company as any other civil process, appoint a committee of three to inquire whether such public road or portion thereof is unsafe for travel by reason of such railroad, or whether an alteration of such public road or the construction of a new public road is thereby rendered necessary for the public safety and convenience; and such committee shall view the ground where such danger is complained of and shall also give written notice both to the parties making the complaint and to the parties complained of, or their agents in the county, of an opportunity to be heard, not less than fifteen days after the service upon such parties of a copy of such notice, and after the hearing shall report thereon to said court which may make any proper order in the premises; and if it shall order any such alteration or construction and said company neglect or refuse to comply with such order, the county court of the county shall alter or construct such public road and may recover the expense thereof from said company.

Sec. 90. The county road engineer may enter upon any of the

lands adjacent to any of the public roads of his county for the purpose of opening any existing drain or ditch or for digging a new ditch or drain for the free passage of water for the drainage of such public roads; upon the lands of any persons adjoining rivers, streams, or creeks to drive spiles, throw up embankments or perform any other labor as may be necessary to keep such rivers, streams or creeks within their proper channels and to prevent their encroachment upon public roads or abutments of bridges. Enter upon the lands adjoining a public road, which during the spring freshets or at the time of high water are subject to overflow from such rivers, streams or creeks; to remove or change the position of the fence or other obstructions preventing the free flow of water under or through a bridge or culvert whenever the same may be necessary for the protection of the public road or bridge.

Sec. 91. Where lands are entered upon under the provisions of the preceding section, the county road engineer may agree with the owner of such lands, subject to the approval of the county court, as to the amount of damages, if any, sustained by the owner in consequence of such entry in performance of the work authorized by such section, and the amount of such damages shall be a district charge to be paid by the county court out of the funds in the county treasury to the credit of the district. If the county road engineer is unable to agree with the owner upon the amount of such damages thus sustained, the amount thereof shall be ascertained, determined and paid in the manner that damages are so ascertained, determined and paid where new public roads are laid out and opened and the county court of the county and the land owners are unable to agree upon the amount thereof.

Sec. 92. The county road engineer may, by an order in writing, authorize the owners of property adjoining the public roads, at their own expense to locate and plant shade trees, fruit trees or nut bearing trees suitable for shade along the public roads. Such trees not to be planted within less than fifteen feet of the center of the road. Such trees shall be planted at least sixty feet apart and according to the plans and regulations sent out by the state commissioner of public roads.

Sec. 93. The county road engineer shall have the full care and control of all such public shade trees in his county, except within the limits of an incorporated city, town or village, and shall



prosecute complaints for malicious injury to, or unlawful acts concerning public shade trees.

Sec. 94. The county road engineer may authorize the owner or occupant of lands to construct and maintain a watering trough beside the public road to be supplied with fresh water, the surface of which shall be at least two feet above the level of the ground and easily accessible for horses with vehicles.

The county road engineer shall annually give a written order upon the county court of the county for two dollars to be paid out of the road fund of the district, to such owner or occupant for maintaining such watering trough and keeping the same supplied with fresh water.

Sec. 95. After satisfying himself that proper quarters can be secured, the county road engineer of any county may, with the consent of the county court, request the sheriff of the county under the provisions of sections fourteen-a one, fourteen-a two, fourteen-a three, fourteen-a four and fourteen-a five of chapter one hundred and forty-five of the code of one thousand nine hundred and six, to procure the services of prisoners serving sentence in the jail, for general work upon the public roads of the county.

Sec. 96. Whenever the state commissioner of public roads, or the county court of the county shall direct the county road engineer so to do, he shall cause to be measured all public roads within his county. Such measurements shall be made either by the use of the cyclometer or otherwise as may be directed.

He shall ascertain and indicate in his report the public roads which have been surfaced with gravel, those which have been surfaced with crushed stone and those which have been shaped and crowned. He shall report in duplicate on forms to be prescribed and furnished by the state commissioner of public roads the total number of miles of all the public roads in his county, one of which reports shall be filed with the county court of the county and one with the state commissioner of public roads.

Sec. 97. The owner or tenant of lands fronting on the public road shall construct and keep in repair, all approaches or driveways to and from the public road, under the direction of the county road engineer and it shall be unlawful for such owner or tenant to fill up any ditch, or place any material of any kind or character in any ditch so as in any manner to obstruct or interfere with the purposes for which it was made.

Sec. 98. Whenever complaint in writing on oath shall be made

to the county road engineer of the county in which there shall be, in whole or in part, any toll bridge, belonging to any person or corporation, representing that such toll bridge has become, or is unsafe for public use, the county road engineer shall forthwith cause to be made a careful and thorough examination of such toll bridge, and if upon examination thereof, he shall be of the opinion that the same has, from any cause, become dangerous or unsafe for public use, he shall thereupon give immediate notice to the owner of such toll bridge or to any agent of such owner acting as the agent, in respect to such bridge, that he has on complaint made, carefully and thoroughly examined the bridge and found it to be unsafe for public use. Such owner shall thereupon immediately commence repairing the same and cause such repairs to be made within one week from the day of such notice given, or within reasonable time thereafter as may be necessary to thoroughly repair the bridge, so as to make it in all respects safe and convenient for public use. For neglect to take proper and effective measures to repair such bridge, its owner shall forfeit fifty dollars and shall not demand or receive any toll for using the same until it shall be fully repaired.

The county road engineer shall cause such repairs to be made and the owners of the bridge shall be liable for the expense thereof and for the services of a foreman at three dollars per day, and upon the neglect or refusal to pay the same upon presentation of an account thereof, the county road engineer may recover the same by action in the name of the county.

Sec. 99. The county road engineer shall bring an action in the name of the county against any person or corporation to sustain the rights of the public in and to any public road in the county and to enforce the performance of any duty enjoined upon any person or corporation in relation thereto and to recover any damages sustained or suffered by any person, corporation or district, in consequence of any such act by any such person or corporation in violation of any such act in relation to such public roads.

Sec. 100. If the county road engineer shall neglect or refuse to prosecute for any penalty provided in this chapter, knowing the same to have been incurred, he shall be liable to a penalty of twenty-five dollars for every such neglect or refusal, which shall be recovered by action in the name of the county by the county court.

Sec. 101. If it shall appear necessary to a county road en-

gineer to close a public road which is being constructed, improved or repaired under this chapter, so as to permit a proper completion of such work, he shall execute a notice in duplicate. Such notice shall state the necessity for closing such public road and describe the portion thereof to be closed. He shall cause to be posted at each end of the portion of road to be closed a copy of said notice, and shall thereupon close the same to public travel by erecting suitable obstructions and posting conspicuous notice to the effect that the public road is closed.

Not more than one mile of any public road shall be closed at any one time.

The county road engineer shall provide a new location for constructing a temporary public road to be used by the traveling public in lieu of the closed public road, and may erect temporary bridges when necessary. For the purpose of locating or constructing such temporary public road or bridge, the county road engineer may enter upon the lands adjoining or near to the closed public road, and may, with the approval of the county court, agree with such owners of such lands as to the damages, if any, caused thereby. If the county road engineer is unable to agree with such owner upon the amount of the damages thus sustained, the amount thereof shall be ascertained, determined and paid as determined in section twenty-two of this chapter.

When such public road shall have been closed to the public as provided herein, any person who disregards the obstructions and notice and drives or rides over the portion of the public road so closed, shall be guilty of a misdemeanor.

Sec. 102. The county court shall furnish the county road engineer and his employees in the county with all the necessary books, stationery and printed forms for the records and uses of their respective offices.

Sec. 103. Each county road engineer shall deliver the books, accounts and papers pertaining to his office to his successor at the expiration of his term of office. If he fail to do so on demand he shall forfeit the sum of one hundred dollars.

Sec. 104. Every public road official who is now in office or who may hereafter be in office by virtue of this chapter shall, at the expiration of his term of office, pay over to his successor all the money in his hands by virtue of his office, taking duplicate receipts therefor, one of which shall be filed with the clerk of the county court. If he fail to do so he shall be liable to double the

amount in his hands, to be recovered by the county before any justice or court having jurisdiction.

Sec. 105. Justices of the peace shall have concurrent jurisdiction with the circuit courts to enforce the misdemeanor penalties herein prescribed.

Sec. 106. All acts and parts of acts inconsistent herewith are hereby repealed.

(Senate Bill No. 142.)

## CHAPTER 53.

AN ACT to create and establish a department of the state government to be known as the office of public roads, and creating the office of state commissioner of public roads, and prescribing the duties and compensation therefor, and to repeal chapter sixty of the acts of the legislature of one thousand nine hundred and seven.

(Passed February 24, 1909. In effect ninety days from passage. Approved by the Governor February 27, 1909.)

Sec.

1. Office of public roads established.
2. State commissioner of public roads; appointment and salary; employees; filling vacancies; duties of commissioner.

Sec.

3. Powers of commissioner defined and scope of work outlined.
4. Chapter sixty of the acts of the legislature of 1907 repealed.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. There is hereby created and established a department of the state government to be known as the office of public roads, which shall be constituted as provided in this act, and shall have the powers and perform the duties hereinafter prescribed.

Sec. 2. The chief officer of said department shall be denominated the state commissioner of public roads. He shall be provided with an office at the state capitol and shall personally superintend the duties thereof.

On or before the first day of July, one thousand nine hundred and nine, the governor, by and with the advice and consent of the senate, shall appoint a state commissioner of public roads who shall hold his office for the term of four years from and after the first

day of July, one thousand nine hundred and nine, and until his successor is duly appointed and qualified.

The commissioner shall within fifteen days from the time of notice of his appointment take and subscribe to the oath of office prescribed by section five of article four of the constitution of this state, and such oath shall be certified by the person who administers the same, and shall be filed in the office of the secretary of state.

He shall receive an annual salary of three thousand dollars.

He may employ a competent civil engineer and such clerks and employees as may be necessary to perform the duties incumbent upon the office.

The commissioner and employees of his office shall be repaid their actual necessary expenses while traveling on official business, not exceeding the sum of one thousand dollars in any one year, an itemized account of which shall be filed with the auditor to be audited by him before the payment thereof. The salaries of the commissioner, and others employed by authority of this act, and all traveling expenses authorized by this act, and the furnishings and contingent expenses of the office shall be paid upon the warrant of the auditor of the state in the same manner as the other state officials and employees are paid.

Whenever a vacancy shall occur in said office of commissioner, by reason of death, resignation or otherwise, the governor shall fill the vacancy for the unexpired term, by appointment, by and with the advice and consent of the senate.

The state commissioner of public roads may from time to time cause to be printed and distributed throughout the state, bulletins containing useful information concerning the construction and maintenance of public roads, the printing to be done by the state printer and at the expense of the state.

He shall make a biennial report to the governor and to the legislature on or before the first day of December of each biennial period and special reports at such other times as may be required by the legislature or the governor. The biennial report shall contain the names and compensation of each and every person that has been employed by the office, the time employed, and the whole amount of the expenses of the department during the interim not previously reported. The report shall state the condition of the

public roads and bridges, the progress of the improvement and the maintenance of the public roads of the state, the amounts of money received and expended during the biennial period upon the public roads and the bridges and also containing such matter as should be brought to the attention of the legislature together with recommendations as to such measures in relation to the public roads, as the public interests require.

The commissioner shall have printed a sufficient number of these reports to provide one for each county road engineer, and any other road officials within the state and enough to satisfy the demand that the public weal may warrant.

Sec. 3. The commissioner of public roads shall have general supervision of all public roads and bridges which are constructed, improved or maintained in whole or in part by the aid of state money, prescribe rules and regulations, not inconsistent with law, fixing the duties of county road engineers and other employees in respect to all public roads and bridges composing the public road system of the state, and determining the method of construction, improvement or maintenance of such public roads or bridges; such rules and regulations before taking effect, to be printed and transmitted to the public road officials affected thereby; compel compliance with the laws, rules and regulations relating to such public roads and bridges by road officials and see that the same are carried into full force and effect; and county road engineers and their employees in establishing grades, preparing suitable systems of drainage, and advise with them as to the construction, improvement and maintenance of public roads and bridges; cause plans, specifications and estimates to be prepared for the repair and improvement of public roads and the construction and repair of bridges when requested to do so by the county road engineer; investigate and determine upon the various methods of road construction adapted to different sections of the state, and as to the best methods of construction and maintenance of public roads and bridges; compile statistics relative to the public roads throughout the state, and collect such information in regard thereto as he shall deem expedient; cause meetings to be held in each county for the purpose of furnishing such general information and instruction as may be necessary regarding the construction, improvement or maintenance of public roads and bridges, and the application of the road laws and the rules and regulations of the department, and

also for the purpose of hearing complaints. He shall notify the county road engineers of his intention to hold such meetings, specifying the date, and the place thereof; aid at all times in promoting public road improvement throughout the state, and perform such other duties and have such other powers in respect to public roads and bridges as may be imposed or conferred on him by law; examine and determine upon the final plans, specifications and estimate for the state aid roads upon the receipt of report of such plans and specifications from the county court and endorse his approval or disapproval thereon, together with the title of his office, and shall return the same to the clerk of the county court of the county; prepare tables showing the total number of miles of public road in the state by counties and districts. He shall cause tests of road materials to be made within the various counties of the state until a sufficient knowledge is obtained of the location and availability of all the materials in this state suitable for road building.

The commissioner may at such times as may be deemed expedient cause an examination of all accounts and records kept as required by the general road law of the state, and it shall be the duty of all road officials to produce all such records and accounts for examination and inspection at any time on demand of a representative of the commissioner of public roads.

Sec. 4. Chapter sixty of the acts of the legislature of one thousand nine hundred and seven, is hereby repealed.

(Senate Bill No. 95.)

## CHAPTER 54.

AN ACT to amend and re-enact sections twelve, thirteen and fourteen of chapter fifty-six of the code of one thousand nine hundred and six, serial sections two thousand six hundred and three, two thousand six hundred and four and two thousand six hundred and five, relating to toll roads and turnpikes.

(Passed February 20, 1909. In effect ninety days from passage. Approved by the Governor March 1, 1909.)

SEC		Sec.	
12.	Wagons or vehicles exempt from toll; width and construction of roads; roads exempt from charging toll.		on which no toll is charged; passes or franks forbidden.
13.	County court must keep up roads	14.	Commissioner of turnpikes; duties and compensation; inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

That sections twelve, thirteen and fourteen of chapter fifty-six of the code of one thousand nine hundred and six, serial sections two thousand six hundred and three, two thousand six hundred and four and two thousand six hundred and five, be amended and re-enacted to read as follows:

Sec. 12. The said toll may be demanded and collected of every person passing the toll gate, whether he shall have traveled the whole or only a part of the section or fractional part; *provided*, no toll shall be collected on wagons or vehicles having tires four inches wide, or wider; and *provided, further*, that the said toll road or turnpike shall be made so as to conform to the following specifications: All roads or turnpikes other than the Rocky Point turnpike, in Monroe county, and that portion of Weston and Gauley bridge turnpike road, in Nicholas county, shall have a hard, smooth road surface of not less than fifteen feet in width, with sufficient crown to give good drainage, exclusive of ditches, and shall be well ditched and drained. All cross drains shall be underdrained, if practicable, or ripped, when necessary. All running streams requiring bridges of fifty feet in length or less, and such others as the county court of a county may direct, shall have a bridge or culvert across the same sufficiently strong and sufficiently wide to insure safe passage to all kinds of vehicles; *provided, further*, that no toll shall be collected unless said toll road or turnpike be constructed in accordance with this section; but no tolls hereafter shall be imposed and collected in either Brooke, Ohio or Jefferson counties, this state; and, *provided, further*, that any citizen of this state may bring an action or suit to prevent the unlawful collection of such tolls.

Sec. 13. That whenever the collection of tolls for traveling over or upon any toll road or turnpike has been abandoned by any county, person, company or corporation, or is prevented by law or by final order of any court having competent jurisdiction; or whenever any of the main county roads are improved under the provisions of section twenty-six, of chapter forty-three of the code



of one thousand eight hundred and ninety-nine, it shall be the duty of the county court of the county wherein such road or turnpike or any part thereof, is located, to keep the same macadamized and piked and in good order and repair, and shall pay for the work and all expense incident thereto out of the county levy.

It shall be unlawful for any officer, director, attorney or other officer of any such turnpike company, or for any other person to accept or receive, directly or indirectly, any pass, frank, or oral or written authority to use any such road or turnpike free or at a less rate of tolls than may be charged to the general traveling public; *provided*, that the president and secretary of such turnpike company and the commissioners of turnpikes may use the said road or turnpike without the payment of tolls. Any violation of this section shall render the person giving or receiving such frank or pass liable to a fine of not less than twenty-five dollars nor more than one hundred dollars for every day such right, authority, frank or pass shall be used.

Sec. 14. In any county where there are ten or more miles of said road or turnpike, or macadamized road, for traveling over which no toll is or may be charged, the county court shall appoint a commissioner of turnpikes, whose duty it shall be to keep all of said roads, turnpikes and macadamized roads in good order and repair. He shall report to the county court at such time as the court may direct, the amount of money that will be necessary to keep said roads, turnpikes and macadamized roads in good order and repair, and he shall make such other reports as the said court may require of him. For his services said commissioner shall be allowed such compensation as in the opinion of the county court may be deemed proper. He shall serve for a period of three years, or until his successor is appointed and qualified; and he shall at all times be subject to the order of said court. He shall give such bond as the court shall require. He may be removed by said court for any official misconduct, or for failure to obey any order of said court. He shall report to the court annually, or oftener if required by said court to do so, the amount and character of the work done upon each of the several roads under his charge and the cost thereof. He shall cause said repairs to be made by contract or otherwise as the said court may direct, and all contracts for such repairs, estimated to exceed one hundred dollars, shall be advertised for at

least two consecutive weeks in two newspapers of opposite politics, if such there be in the county, setting forth fully the portions of road and the character and amount of such repairs, and the said commissioner of turnpikes shall receive sealed bids for the same, and award the contract to the lowest and best bidder, under such rules and regulations as it may prescribe. All repairs of said roads, turnpikes and macadamized roads shall be done under the direction of said commissioner of turnpikes.

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

(House Bill No. 153.)

## CHAPTER 55

AN ACT providing for letting contracts and dragging of roads.

(Passed February 26, 1909. In effect ninety days from passage. Approved by the Governor March 3, 1909.)

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| <p><b>Sec.</b></p> <ol style="list-style-type: none"> <li>1. Authorizing expenditure by state commissioner of public roads; when; amount.</li> <li>2. Agreement to demonstrate; county court shall forthwith repair; supervision by whom; shall forthwith contract; length of contract; specifications furnished by whom; report of contractor; to whom furnished.</li> <li>3. Provision for contracts; when binding; partial payments; duty of</li> </ol> | <p><b>Sec.</b></p> <ol style="list-style-type: none"> <li>county engineer as to work done.</li> <li>4. Providing for payments to contractor; how paid; by whom.</li> <li>5. Duties of president of county court and county road engineer on completion of work; state commissioner shall examine and notify auditor as to amount due from state; proportion entitled to; maximum amount; how paid; to whom.</li> </ol> |
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*Be it enacted by the Legislature of West Virginia:*

Sec. 1. The state commissioner of public roads is hereby authorized to expend during the fiscal year ending September the thirtieth, nineteen hundred and ten, the sum of three thousand dollars, or so much thereof as may be necessary, out of the funds of the state treasury not otherwise appropriated, to be apportioned equally among the several counties of the state and shall be expended as hereinafter provided.

Sec. 2. The state commissioner of public roads and the county court of any county in this state, having agreed upon some piece or pieces of road suitable for a one-year's

demonstration of the use of the drag as a suitable implement for the maintenance of said road, the county court of the county shall proceed forthwith to repair said piece or pieces of road so agreed upon, according to the directions of the state commissioner of public roads. The county court shall forthwith contract with some reliable person or persons, to do the dragging of such piece or pieces of road agreed upon for the term of one year after the first day of October, nineteen hundred and nine, according to plans and specifications furnished by the state commissioner of public roads,

A report of the work shall be made by the contractor, to the state commissioner of public roads, on blanks furnished by him, within twenty-four hours after each dragging.

Sec. 3. All contracts under the provisions of this act shall set forth specifically the bid, plans and specifications for the work to be done, and shall not be binding either upon the county or the state, until it has been signed by the president of the county court for the county and the state commissioner of public roads for the state.

Where any contract provides for partial payments based upon the amount of work done, or upon completion of the work according to contract, it shall be the duty of the county road engineer to certify in writing to the county court as nearly as possible, the amount of work done for which payment is to be made and that the same has been done in strict compliance with the contract, plans and specifications.

Sec. 4. All payments due to any contractor under the provisions of this act, shall, when certified to by the county road engineer, be presented to the county court and if by them found correct, shall, upon the order or warrant of said court, signed by the president and clerk thereof, be paid by the sheriff out of the county treasury.

Sec. 5. When the work has been completed according to contract, the county road engineer and the president of the county court shall jointly certify in writing to the state commissioner of public roads, that the work has been done in all respects in strict compliance with the contract, plans and specifications, whereupon the state commissioner of public roads shall carefully examine the same and if found correct, and if in his opinion the work has been satisfactorily performed, he shall notify the auditor of the state

that the county court of the county has complied with the provisions of this act and shall set forth in the notice the amount of money due such county from the state, which amount shall be equal to one-half of the total cost of said work. In no case, however, shall the cost to the state exceed the sum of fifty-four dollars and fifty-four cents. The auditor of the state shall issue his warrant on the treasurer of the state, for such amount in favor of the sheriff of the county, who shall deposit the same in the county treasury.

(Senate Bill No. 111.)

## CHAPTER 56.

A NACT to amend and re-enact section twenty-two of chapter forty-four of the code of West Virginia, as last amended and re-enacted by chapter seventy-three of the acts of the legislature of one thousand nine hundred and seven, in reference to bridges constructed and maintained by corporations.

(Passed February 20, 1909. In effect ninety days from passage. Approved by the Governor March 1, 1909.)

Sec.  
22. Corporations or railroad companies authorized to bridge the Ohio river under certain regulations; authorized to take tolls; specifications as to construction of bridges over the Great Kanawha river between govern-

Sec. ment locks six and three; empowering corporations to borrow money and issue bonds, etc.; mortgages not valid unless authorized by a majority of stock of company.

*Be it enacted by the Legislature of West Virginia:*

That section twenty-two of chapter forty-four of the code, as last amended and re-enacted by chapter seventy-three, acts of the legislature of one thousand nine hundred and seven, be and the same is hereby amended and re-enacted, to read as follows:

Sec. 22. Corporations may be formed under the provisions of the first twenty-four sections of chapter fifty-four of the code for the purpose of bridging the Ohio river. Any such corporation or any railroad corporation is hereby authorized to construct and maintain a bridge across said river in the manner now, or which may hereafter be provided by the congress of the United States;

upon complying with the requirements, conditions and provisions so prescribed; and not otherwise, and such corporation is authorized to take tolls, for the passage of persons, railroad cars, engines, vehicles and other things passing on and over such bridge; any such corporation may obtain the real estate necessary for the construction of its bridge and its approaches thereto, under the provisions of chapter forty-two of the code, and may purchase from any other corporation which may have taken steps toward the erection of a bridge in the manner aforesaid, all the rights, franchises and property it may have acquired; subscriptions to the stock or bonds of any such corporations may be made by counties, districts, and municipal corporations, in the manner provided for in chapter thirty-nine of the code; and subscriptions may be made thereto by other corporations, including railroad corporations, with the assent of the holders of two-thirds of the stock of any such corporation, at any general or special meeting of the stockholders; and any corporation heretofore or hereafter formed for the purpose of bridging the Great Kanawha or Big Sandy rivers, or any railroad corporation constructing such bridge, shall have all the privileges accorded by this section to corporations formed for the purpose of bridging the Ohio river; *provided, however,* that every bridge erected across the Great Kanawha river at and above the United States government lock number six and between said lock number six and the United States government lock number three shall have at least one channel span, the center of which shall be in the middle of the channel, usually run by descending coal fleets in high towing stages; said channel span to have a clear opening of four hundred feet at lower water line, and be at least seventy-five feet above low water; and *provided, further,* that every bridge erected across the Great Kanawha river at and above the United States government lock number three and below the mouth of Lower Lomp creek shall have at least one channel span, the center of which shall be in the middle of the channel, usually run by descending coal fleets in high towing stages; said channel span to have a clear opening of four hundred feet at low water line, and be at least seventy-five feet above low water, except in such cases as the United States government may authorize the construction of a bridge of a less height, not, however, to be below the minimum of sixty feet above low water, and said Great Kanawha river may be bridged by any

such corporation as is hereinbefore mentioned, at or above the mouth of Lower Loup creek, subject only to such terms and conditions, if any, as the United States government acting through its authorized officers may prescribe; but the benefits of this section shall not inure any corporation whose corporate rights have lapsed, been forfeited or become forfeitable. Every corporation formed under the laws of this state for the purpose of the construction and maintenance of a bridge or bridges, in addition to the powers heretofore conferred upon or possessed by it, shall have power from time to time, to borrow such sums of money as may be necessary for the purpose and business of the company, and to issue bonds, bills of credit or indebtedness and preferred stock, and dispose of the same for any amount so borrowed, and to mortgage or encumber, by deed of trust, its corporate property and franchises, to secure payment of any debt contracted by such corporation, for its purposes and business; but no such mortgage or deed of trust shall be valid, unless authorized by a resolution adopted by the affirmative votes of the holders of a majority stock of the company; and any such mortgage or deed of trust may include, grant and convey and make subject to the lien thereof, all betterments, improvements and works made or constructed and property and franchises acquired and used in the company's business, after the making of such mortgage or deed of trust, money and debts due the granting company excepted, and the purchaser at any sale under such mortgage or deed of trust shall be entitled to such betterments, improvements, works, property and franchises, with the exception aforesaid, as well as the property and franchises granted, thereby owned and possessed by the company, at the time of the making of the mortgage, or deed of trust, under which the sale is made; any other law or statute to the contrary notwithstanding. Such purchaser shall be a corporation in the same manner as is provided in relation to purchasers of railroad property, by sections seventy-two and seventy-three of chapter fifty-four of the code of West Virginia, and all the provisions of said two sections shall apply to the last mentioned corporation. All mortgages or deeds of trust heretofore made by any bridge company incorporated under the laws of this state, whether the same shall have been executed by virtue of a resolution adopted by a vote of the stockholders, or shall have been executed by virtue of a resolution

adopted by the board of directors of such corporation, without any action on the part of the stockholders thereof, which purport to grant and convey property and franchises of the granting company owned and possessed at the time of making the mortgage or deed of trust, or such property and franchises, together with property or franchises, or both, of such company, which it may have acquired subsequently to the making of such mortgage or deed of trust, shall be as valid and effectual for the purpose of effecting such granting and conveyance, and make the same as effectually as if this section as amended by this act had been in full force before and at the time of the execution of such mortgages or deeds of trust, and purchasers at any sales thereunder shall have the same rights, powers and privileges, as are by this section conferred upon purchasers at sales made under mortgages and deeds of trust executed by such companies after this act takes effect.

(Senate Bill No. 53.)

## CHAPTER 57.

AN ACT to amend and re-enact section thirty-one of chapter one hundred and forty-five of the code of West Virginia, concerning wilful injuries to bridges, tracks and other railroad properties, etc.

(Passed February 24, 1909. In effect from passage. Became a law without the approval of the Governor.)

Sec. 31. Providing penalties for persons who perpetrate wilful injuries to bridges, tracks and other railroad properties: if death results from unlawful acts, offender shall be adjudged guilty

Sec.

of murder: riotous or disorderly conduct on passenger cars punished by a fine or imprisonment: provisions for special police officers, etc.

*Be it enacted by the Legislature of West Virginia:*

That section thirty-one of chapter one hundred and forty-five of the code of West Virginia be amended and re-enacted so as to read as follows:

Sec. 31. Any person who shall wilfully and unlawfully injure, impair, weaken, destroy or misplace any building, bridge, rail, track, side-track, switch, rail bonds, spur-track, work, engine,

machine, locomotive, hand-car, depot, car, trestle, telegraph line, telegraph pole, telegraph wire, telegraph instrument, or any other instrument, machine, invention, or mechanical or electrical appliance whatever which may be, or is now used by any company operating or using any railroad, or other line, or work of internal improvement, in this state, or obstruct any corporation which is the owner or lessee of any railroad, or other work of internal improvement, in this state, in the use of any such property, shall be guilty of a misdemeanor and shall be fined not exceeding one thousand dollars and imprisoned not exceeding six months; and if the death of any person occur in consequence of any such unlawful act, the person or persons committing the same shall be guilty of murder and punished accordingly. Or if any person on a train or locomotive or passenger car is maimed or disfigured by reason of any such unlawful acts, the person convicted of causing the same shall be guilty of a felony and shall be punished by confinement in the penitentiary not less than one year nor more than twenty years. And if any person shall shoot or throw stones, or other dangerous missiles, at or into any passenger car, or other railroad car, used for carrying passengers, or other persons, while any such passenger, or other person, is within the same, he shall be guilty of a felony, and shall be confined in the penitentiary not less than two or more than ten years. And if any person, whether a passenger or not, shall, while on any passenger car or on any train of cars, behave in a riotous or disorderly manner, he shall be guilty of a misdemeanor and fined not less than twenty-five dollars nor more than two hundred dollars and may, at the discretion of the court, be confined in jail not less than one nor more than six months, and may be ejected from such car or train by the person, or persons in charge thereof; and such force as is necessary for that purpose, may be used by such persons in charge of such passenger car or train of cars, with such other persons as they may call to their aid. And the conductor of every passenger car as well as the conductor of every train of railroad cars shall have all the powers of a conservator of the peace while in charge of such car or train. Any railroad company owning or leasing and operating, or using, any railroad lying wholly or partly within this state whether such railroad be operated by steam or electric power may apply to the governor to appoint such citizen, or citizens, of this state as such railroad company may designate, to act as special police officers for



such railroad company; and the governor may, upon such application, appoint and commission such person or persons, or so many of them as he may deem proper, as such police officers. Every police officer so appointed shall appear before some person authorized to administer oaths and take and subscribe the oath prescribed in the fifth section of the fourth article of the constitution, and shall file such oath with the clerk of the county court, or other tribunal established in lieu thereof, of the county in which he shall reside. He shall also file certified copies of such oath in the office of the secretary of state and in the office of the clerk of the county court, or other tribunal established in lieu thereof, of each county through which such railroad or any portion thereof may extend. Every police officer appointed under the provisions of this act shall be a conservator of the peace within each county in which any part of said railroad may be situated, and in which such oath or a certified copy thereof shall have been filed with the clerk of the county court or other tribunal established in lieu thereof; and, in addition thereto, he shall possess and may exercise all the powers and authority, and shall be entitled to all the rights, privileges and immunities within such counties, as are now, or may hereafter be vested in or conferred upon the regularly elected or appointed constables of said county. Any appointment made by the governor under the provisions of this act may be revoked by him for good cause shown, and such police officers may be removed from office for official misconduct, incompetence, habitual drunkenness, neglect of duty, or gross immorality, in the same manner in which regularly elected or appointed constables may be removed from office; and whenever any such railroad company shall desire to dispense with the services of any such police officer, it may file a notice to that effect, under the corporate seal, attested by its secretary, in each of the several offices in which such oath or certified copy thereof shall have been filed; and thereupon the powers of such police officer shall cease and determine. Such police officers may wear such uniform and badge, or either of authority as the railroad company, upon whose application they were appointed, may designate, and such railroad company shall pay them for all services rendered by them pursuant to such appointment.

(House Bill No. 292.)

## CHAPTER 58.

AN ACT providing for the government and control of the public institutions of the state, by creating a state board of control and a state board of regents, and fixing the duties, powers, responsibilities and compensation of said boards and the members thereof.

(Passed February 22, 1909. In effect ninety days from passage. Approved by the Governor February 27, 1909.)

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| <p>Sec.</p> <ol style="list-style-type: none"> <li>1. State board of control created; corporate powers; appointments to be made by governor; term of office; president of board; removals; vacancy; salary; board to be provided with an office, etc.; members not eligible to any other lucrative office in state.</li> <li>2. Written statement of expenditure to be presented to auditor before expenses paid.</li> <li>3. Shall have full power to manage, control, etc., certain state institutions.</li> <li>4. To have charge of financial and business affairs of certain state educational institutions.</li> <li>5. Title to all property belonging to certain institutions to be vested in board of control; when certain boards have no further legal existence.</li> <li>6. Moneys to be paid into state treasury; to be reported to board of control; if deficiency exists in legislative appropriation for any institution, what then.</li> <li>7. Secretary, appointment of; salaries of employees of board; to cause to be kept a complete set of books and accounts with each institution; power of board to examine records of institutions.</li> <li>8. Visiting of institutions by board of control; duty of board during visitation; witness fees; penalty for refusing to obey orders of board; members to alternate in their monthly visits.</li> <li>9. Governor to appoint superintendents of the several institutions and warden of the penitentiary; removals; vacancy; appointment of assistants and employees; compensation; duty of board as to investigation of complaints, etc.; to fix salaries and compensation of officers, etc.; quarters, etc., to be furnished the chief officer of institutions.</li> <li>10. To make rules and regulations for the government of institutions.</li> <li>11. Board required to purchase all sup-</li> </ol> | <p>Sec.</p> <ol style="list-style-type: none"> <li>plies needed for the proper support and maintenance of the institutions; contracts to be awarded to lowest responsible bidders; regulations.</li> <li>12. Power vested in board to employ competent architects for preparations of plans for new buildings; other powers of board in erection of buildings.</li> <li>13. To prescribe records to be kept in the several institutions; copy of records to be transmitted to board monthly; to have authority to assemble chief officers of institutions; traveling expenses.</li> <li>14. Biennial report to governor; what to show; special reports.</li> <li>15. May accept any gift or devise.</li> <li>16. Shall have charge and control of insurance of all state buildings.</li> <li>17. Board of regents; corporate powers; to consist of five members, including state superintendent of schools; governor to appoint; term of office; removals; vacancy; salary; secretary.</li> <li>18. To have control of educational departments of the several institutions; authority to employ teachers, etc., of certain institutions; to fix compensation, subject to confirmation of board of control; rights and duties heretofore belonging to boards of regents of certain institutions hereby given to board of regents created by this act.</li> <li>19. To have authority, in consultation with head teachers, etc., to prescribe course of study; to make and publish rules and regulations governing institutions; to establish departments; to meet with state board of control; when.</li> <li>20. Annual report to governor; what to show; to furnish data to state superintendent of free schools.</li> <li>21. State board of control and state board of regents to make report to auditor; what report to state.</li> </ol> |
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Sec.  
22. Governor may require the boards to perform duties pertaining to the management and control of institutions.  
23. Legal rights which belong to or may accrue to any board of regents or directors of institu-

Sec.  
tions shall belong and accrue to state board of control.  
24. Members of board of control to take oath of office and give bond.  
25. Inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. There is hereby created a state board of control, which shall be a corporation and as such may contract and be contracted with, plead and be impleaded, sue and be sued, and have and use a common seal. It shall consist of three members, chosen from the two largest political parties, who shall be citizens of the state, and not more than two of them shall belong to the dominant party. They shall be appointed by the governor, by and with the advice and consent of the senate. The members first appointed shall hold office as designated by the governor, for two, four and six years, respectively, beginning the first day of July, one thousand nine hundred and nine. Subsequent appointments shall be made as above provided, and except, to fill vacancies, shall be for a period of six years. The board shall choose one of its members to be president thereof. The governor may remove any member for incompetency, neglect of duty, gross immorality, malfeasance in office, or for other good cause; and in case of a vacancy, whether occurring by reason of removal or otherwise, may declare the office vacant, and fill the same by appointment for the unexpired term.

The salary of each member shall be five thousand dollars a year, each shall be paid his actual traveling and other necessary expenses when his official duty shall cause him to be away from the capitol, but the amount of traveling expenses in any one year for all the members of the board, shall not exceed three thousand dollars, except upon written order of the governor.

The board shall be provided with an office at the seat of government, and with such furniture and clerical assistance as shall be necessary. The members shall give their entire time to the duties of their office and shall not be eligible to any other lucrative office in the state during the term of service or for one year thereafter, or to any position in any state institution during the term for which he was appointed, nor within one year after his term shall have expired.

Sec. 2. Before any expenses of any member of the board of

control or of the board of regents, or of any officer or agent thereof, or before any expenses incurred by any person under the direction of either of said boards, or the expenses of any officer or employee of any institution under the charge of said boards, shall be paid, a full written statement of every item of such expenditure, shall be presented to the auditor, duly verified, which verification shall state that the expense bill is just, accurate and true, and is claimed for cash expended for the purposes named in the statement. Unless the statement is so verified and duly audited, payment thereof shall not be made.

Sec. 3. The board of control shall have full power to manage, direct, control, and govern the West Virginia asylum, the second hospital for the insane, the West Virginia hospital for the insane, the West Virginia penitentiary, the West Virginia reform school, the West Virginia industrial home for girls, miners' hospital No. 1, miners' hospital No. 2, miners' hospital No. 3 and the schools for the deaf and the blind and such other institutions, except educational, as may hereafter be created by law.

Sec. 4. The board of control shall have charge and control of the financial and business affairs of the West Virginia university, of the preparatory branches of the university at Montgomery, and at Keyser, of the state normal school and its branches, of the West Virginia colored institute and of the Bluefield colored institute and have such other control and management of said institutions as are in this act provided.

Sec. 5. The title to all property constituting or belonging to the several institutions named in sections three and four and now vested in the several boards of directors, or of regents thereof, shall be and hereby is vested in said board of control on and after July first, one thousand nine hundred and nine; and the several boards now charged with the control and management of said institutions shall thereafter have no further legal existence; and the board of control is, without further process of law, authorized and directed then to assume control and management of the said institutions subject to the provisions of this act.

Sec. 6. All funds and moneys belonging to the state which shall come under the control or in the possession of the state board of control, or of the state board of regents, or any officer, agent or board of any of the state institutions shall be paid into the state treasury on the last day of each month and be reported to the state board

of control, under such rules and regulations as it may prescribe. Whenever the appropriations by the legislature are insufficient to pay the expenses of conducting any of said institutions, the deficiency shall be certified by the state board of control to the board of public works. Such certificate shall state the name of the institution, the items and amount in detail certified to be needed, and the board of public works may direct the payment of the same or any part thereof under chapter sixteen of the acts of one thousand nine hundred and four.

Sec. 7. The board of control shall appoint a competent secretary and such other clerical assistants as may be necessary to the proper conduct of its business. The salaries or compensation of the employees of the board shall be fixed by it, but no salary or compensation shall be increased to exceed the amount appropriated by the legislature to pay the same. The board shall cause to be kept at its office a proper and complete set of books and accounts with each institution, which shall clearly show every expenditure authorized and made thereat. The said books shall exhibit an account of all appropriations made by the legislature concerning any institution named in sections three and four, and of all other funds under the control of the board. It shall, in conjunction with and subject to the approval of the chief inspector of public accounting, prescribe the form of vouchers, records and methods of keeping accounts at and by each of the institutions named in sections three and four. Such vouchers, records and methods of accounts of the institutions shall be as nearly uniform as possible. The board, or any member thereof, shall have the power to investigate the conditions of and to examine and check the records of any of said institutions at any time. The board shall also have the power to authorize any of its members or officers, its book-keeper and accountant, or any other employee, to proceed to any of the said institutions, and to examine and check the records, take inventory of the property thereof, or any of its departments, or for any other purpose the board may deem necessary. Any person doing such work shall receive, in addition to regular compensation, pay for actual expenses incurred thereby, such expenses to be paid in the manner hereinbefore provided. Upon the completion of any such special work the board shall cause a full and complete written report of the same to be made to it as soon as practicable.

Sec. 8. It shall be the duty of the board of control to visit at least once each six months, each of the institutions named in section three and visit each of the institutions named in section four as often as may be necessary, at which time meeting of the board shall be regularly held at the institution. During each such visitation the board shall thoroughly inspect all the departments of the institution and investigate the financial condition and management thereof. For the purpose of aiding in any investigation, the board shall have the power to summon and compel the attendance of witnesses, to be examined under oath, which any member shall have the power to administer. The board shall also have access to all books papers and property material to any investigation, and may order the production of any books, papers or property material thereto. Witnesses, other than employees of the state, shall be entitled to the same fees as in civil cases in the circuit court. It shall be the duty of the board to cause the testimony taken to be transcribed and filed in the office of the board within ten days after the same is taken, or as soon thereafter as practicable. Any person refusing or failing to obey the orders of the board, issued under the provisions of this section, or to give or produce evidence required, shall be reported by the board to the proper circuit court or any judge thereof, and shall be dealt with by the court as for contempt. It shall be the duty of the board to cause each institution named in section three to be visited by one or more members, as the case may seem to require, each month. The members shall alternate in their monthly visits of inspection.

Sec. 9. The governor shall, by and with the advice and consent of the senate, appoint a superintendent for the West Virginia asylum, superintendent for the second hospital for the insane, a superintendent for the West Virginia hospital for the insane, a warden for the penitentiary, a superintendent for the West Virginia reform school, a superintendent for the West Virginia industrial home for girls, a superintendent for miners' hospital No. 1, a superintendent for miners' hospital No. 2, a superintendent for miners' hospital No. 3, and a superintendent for the schools for the deaf and the blind. The governor may remove any superintendent or warden for incompetency, neglect of duty, gross immorality, malfeasance in office, or for other good cause, and in case of vac-

ancy, whether occurring by reason of removal or otherwise, may declare the office vacant and fill the same by appointment for the unexpired term. The superintendent of each institution and the warden of the penitentiary shall have the power to appoint all assistants and employees required for the management of the institution in his charge, the number of said assistants and employees, and their compensation, to be first fixed by the state board of control. The superintendent of any institution and the warden of the penitentiary may, at his pleasure, discharge any person therein employed. It shall be the duty of the board to investigate any complaint made against the chief executive officer of any institution, and also against any other officer or employee thereof, if the same has not been investigated. The board shall have the power to recommend to the governor the removal of any such chief executive officer, or other officer, setting forth in such recommendation the reasons for the same. The board shall fix the salaries or compensation of the officers and employees of the institutions named in section three on or before the first day of July of each year, to be paid during the year to commence July first, and no change shall be made therein excepting at the time prescribed in this section. The salaries or compensation of all officers and employees of the several institutions named in sections three and four shall be paid monthly, to include the last day of each month.

The chief officer of each of the institutions named in section three shall be furnished quarters, household furniture, board, fuel and light for himself and his family; quarters, household furniture, board, fuel and light shall be furnished to such other officers as is made necessary by the character of their service, and the board of control shall designate those who shall receive the foregoing in addition to their salary.

Sec. 10. The board is authorized to make rules for the proper execution of its duties and powers. It shall also have the power to adopt rules and regulations for the government of the institutions, named in sections three and four, and shall therein prescribe, consistent with the provisions of this act, the duties of the persons connected with the management of the said institutions.

Sec. 11. The board of control is hereby empowered and required to purchase all supplies needed for the proper support and maintenance of the institutions named in sections three and four. Such supplies shall be purchased whenever practicable under contract,

notice of the same to be published in at least two newspapers of general circulation in the state for not less than two weeks prior to the award being made, and printed notice shall be sent to every dealer who has requested his name to be placed upon the mailing list. The contract shall be awarded to the lowest responsible bidder if the price be a fair and reasonable one and not greater than the market value and price. The board is authorized to require such securities as it may deem proper to accompany the bids submitted, and shall also fix the amount of the bond or other security that shall be furnished by the person, firm, or corporation to whom the contract for any supplies is awarded. The board shall have the power to reject any and all bids submitted if for any reason it is deemed to the best interests of the state to do so, and to re-advertise in accordance with the provisions of this section. The boards may determine the kind and character of animals to be slaughtered for meats for use in the several institutions under their control and it shall make such rules and regulations as may be necessary for the inspection of meats, poultry, bread and other supplies intended for use in any of the said institutions. In accepting bids for supplies preference shall be given to citizens of this state, other things being equal. Whenever the board shall fail to make contracts for supplies the same may be purchased by the chief officer in charge of an institution, under such rules and regulations as shall be prescribed by the board of control. It shall be the duty of the chief officer of each institution named in sections three and four to cause to be prepared estimates of supplies required for the proper conduct and maintenance of the institution under his charge, covering periods to be fixed by the board of control, and to forward the same to the board in accordance with its directions. No member or officer of the board of control, or of the state board of regents, and no person in their employ, and no officer or employee of any state institution shall be directly or indirectly interested in the purchase of supplies, or in any supplies purchased, nor in any contract, agreement or undertaking entered into by and for any of said institutions; and if he be so interested he shall forfeit his office, such contract shall be void, and such person shall be liable to the state upon his official bond for all damages. No member of said boards, no officer, agent or employee thereof, and no officer of any institution under their charge, shall directly or indirectly for himself or for another, or for any such



institution, receive or accept any gift or gratuity or thing of value from any dealer in goods, merchandise or supplies which are or may be used in such institution, or from any person, firm or corporation who are or may be interested in any contract with such board for or on account of the state. Any violation of this section shall be a misdemeanor, and be punished by a fine of not less than twenty-five nor more than five hundred dollars.

Sec. 12. The power is vested in the board of control to employ the services of competent architects for the preparation of plans and specifications for all new buildings hereafter to be built by the state, or for the remodeling or the construction of additions to buildings now existing or hereafter built; to employ competent persons to superintend the construction of new buildings or additions or repairs to old ones, to call for bids and award contracts for the erection of new buildings; *provided*, that no plans and specifications shall be accepted and no contract shall be awarded for the erection of a new building, or material addition thereto, until after the same has been submitted to and approved by the board of public works. The board of control shall have the right to proceed with the erection of any new building, or the repairs of, or changes in or additions to any buildings already constructed by employing thereon the labor of inmates of institutions when in their judgment it is proper to do so, under such arrangements as can be made with contractors for the performance of such work.

Sec. 13. The state board of control shall prescribe the records to be kept for statistical and other purposes in the several institutions named in sections three and four. It shall require a copy of such record to be transmitted to it for the preceding month, and the board shall keep in its office in a substantially bound book a copy of every report that they may require from the chief officers of any institution; and shall have authority to assemble the chief officers of the institutions or any of them at its office, for the purpose of discussing any question which may be common to their welfare. The actual expenses made necessary in traveling to and from such meeting and while upon its attendance, shall be paid out of the contingent fund of the several institutions. All bills on account of such expenses shall be made and paid as provided in section two of this act.

Sec. 14. On the first day of October, one thousand nine hundred and ten, or as soon thereafter as practicable, and biennially there-

after, the board of control shall file with the governor a full report of all matters herein prescribed, showing the condition of all the institutions under its control, the cost of conducting the same during the period covered by the report, naming the buildings contracted to be erected, at what points, for what purposes, the contract price and the condition of construction, and shall also include therein a statement of the work and expenses of the board. It shall also incorporate in its report suggestions respecting legislation for the benefit of the several institutions under its care, and shall make estimates of appropriations, which in its opinion are necessary for the maintenance and other expenses of the institutions and for buildings, betterments and other improvements. The said report shall also contain such portions of the biennial reports made by the chief officers of the several institutions to the board as it may deem proper, also statement showing the dates of visitation made by the board or by any member thereof to the several institutions. In its report shall be included an itemized statement of the expenses of the board and such other matters as it may deem pertinent. There shall also be published in the report full and complete lists of the officers and employees of the board and of the institutions named in sections three and four, showing the annual salary paid and perquisites allowed each officer or employee. The governor is hereby empowered to call upon the said board for any special report or information relative to any matter coming within its authority. The governor may direct the said board to make any special investigation into and report upon any matter connected with any state institution.

Sec. 15. The board of control is hereby empowered to accept any gift or devise of any property or thing which lawfully may be given. If such gift or devise is to any particular institution named in sections three and four, whatever profits shall arise from its use or investment, shall be paid into the state treasury for the use and benefit of the said institution and the board is hereby invested with the title to the property which is, or may be subject of such gift or devise.

Sec. 16. The board of control shall have charge and control of the insurance of all buildings and property of the state and shall keep the same properly insured against loss by fire, by explosion of steam boilers and the like; but the insurance of the property of the state

at the seat of government shall be first authorized by the board of public works. The board of control shall keep a record of all such insurance which shall show the name of each insurance company, the number, date and amount of insurance of each policy written by it, the rate of premium, the building or other property on which insurance is placed, the period for which written and the date of its expiration; and the amount of insurance upon each building and such other matters as the board may deem pertinent.

Sec. 17. There is hereby created a state board of regents which shall be a corporation, and as such may contract and be contracted with, plead and be pleaded, sue and be sued, and have and use a common seal. It shall consist of five members including the state superintendent of free schools, who shall be citizens of the state, and who shall be chosen from the two largest political parties and not more than three members shall belong to the dominant political party. On or before the first day of July, one thousand nine hundred and nine, the governor shall appoint, by and with the advice and consent of the senate, four of said regents, one for one year, and one for two years, one for three years and one for four years, and thereafter one each year for the full term of four years. The board shall choose one of its members to be president thereof. The governor may remove any member of the board for incompetency, neglect of duty, gross immorality, malfeasance in office, or for other good cause, and in case of vacancy, whether occurring by reason of removal or otherwise, may declare the office vacant and fill the same by appointment for the unexpired term. The salary of each member of said board, except the state superintendent of schools, shall be one thousand dollars a year and in addition thereto he shall be paid his actual expenses while so employed, but the state superintendent shall be allowed only his necessary expenses while serving as a regent and shall receive no per diem. A verified itemized statement of their expenses shall be filed with the state auditor to be audited by him before payment therefor, and hereinbefore provided. The board may employ a secretary and fix his compensation.

Sec. 18. The state board of regents shall have control of the educational departments of the several institutions named in section four, on and after July first, one thousand nine hundred and nine, and the several boards of regents now in charge of said in-

stitutions shall have no legal existence after that date. The state board of regents shall have authority to employ the head teacher or president of the university, the head teacher or superintendent of each of the other of said institutions, and the professors, other teachers and other employees of such institutions. They shall fix the compensation of such president, superintendents, professors, teachers and employes, but such compensation and the number of employees, shall be subject to the confirmation of the board of control; or if the board of control shall before the beginning of any year fix the total amount that shall be paid for the year in compensation to such president, superintendents, professors and teachers and employees, then the board of regents shall fix their respective salaries or compensation, but the aggregate thereof shall not exceed the amount fixed by the board of control and in no case shall the amount fixed exceed the appropriation made for the purpose by the legislature.

All rights and duties heretofore belonging to the boards of regents of the institutions named in section four, which are not in conflict with the provisions of this act, are hereby given to the board of regents hereby created.

Sec. 19. The state board of regents shall have authority in consultation with the head teacher, and professors and other teachers in each institution named in section four, to prescribe the curriculum or course of study to be pursued therein, and prescribe the text books to be used. The said board may make out and publish rules and regulations to be observed by all of said institutions, and separate rules and regulations for any one of them. The board of regents shall also from time to time establish such departments of education in literature, science, art, agriculture, military tactics and other departments as they may deem expedient, and as the funds for such purposes may warrant, and as the law may permit; also fix the tuition, fees and charges for attending and receiving instructions in any of said departments. The state board of regents shall meet with the state board of control whenever the state board of control shall notify them of such meeting.

Sec. 20. On the first day of October, one thousand nine hundred and ten, or as soon thereafter as practicable, and annually thereafter, the state board of regents shall make to the governor a full report (a copy whereof shall be filed with the state board of control at the same time) which shall show their transactions for the

period covered by the report, the date, place and duration of each of their meetings; the amounts paid to each member of the board for compensation and expenses separately; the number of persons employed about each of their said institutions; the official designation of each of such persons, and the amount and rate of compensation paid to him; and shall report the amount disbursed by them of any funds under their control, stating the purposes for which expended and the amount expended for each purpose, and the number of days actually engaged by the persons employed about each of their said institutions, including teachers and professors. Said report shall also show the number of students actually attending each day at each of said institutions, and the number of students enrolled in each school or department of each of said institutions, and the total cost of each of said schools or departments. They shall furnish to the state superintendent of free schools all data which he may request. They shall make special reports to the governor as he may request; and may in their report make recommendations respecting legislation needed to promote the welfare of their institutions.

Sec. 21. The state board of control and the state board of regents shall from time to time as may be necessary, make a report to the auditor, which shall state the names of each person employed by each of them at any of the institutions named in sections three and four, his official designation and the rate of compensation per month (or by the day or week if employed for less than a month) and out of what funds or appropriation the same is payable. The chief officer or head teacher of any such institution, or other person who may have been appointed for the purpose by the state board of control, shall make out and certify to the auditor at the end of each month a list of persons to whom any payments may be due, stating for what purpose due, the amount due each person and the fund or appropriation from which payable; one copy whereof shall be filed in the office of the institution where made, and one in the office of the state board of control. If the auditor find such list correct and in accordance with the reports made to him by the state board of control, or the state board of regents, he may pay to the persons entitled thereto the amounts so certified as due each.

Sec. 22. The governor may require the state board of control or the state board of regents to perform any duty or work pertaining to the management and control of any of the institutions

named in sections three and four and consistent with the object of this act.

Sec. 23. All legal rights which may now belong to or which would have accrued to any board of regents or of directors of the institutions named in sections three and four, shall belong and accrue to the state board of control on and after July first, one thousand nine hundred and nine; and nothing in this act contained shall be construed as affecting any such rights but the same shall be vested in, and may be exercised by said state board of control, on and after said date as fully as the same might have been exercised by any such board of regents or of directors, if this act had not become law. And all obligations and liabilities legally incurred by any of said board of regents or board of directors of any such institutions shall be assumed by said board of control.

Sec. 24. Before any member of this board shall enter upon the discharge of his duties he shall take an oath to support the constitution of the United States and the state of West Virginia, conditioned for the faithful discharge of the duties of his office and enter into a bond in a sum of not less than twenty-five thousand dollars, to be approved by the board of public works.

Sec. 25. All acts and parts of acts coming within the purview of this act and inconsistent therewith, are hereby repealed.

(Senate Bill No. 160.)

## CHAPTER 59.

AN ACT to establish a state fire marshal's department under the supervision of the insurance commissioner, and to prescribe the duties of the same and to provide for the maintenance of such department.

(Passed February 23, 1909. In effect ninety days from passage. Approved by the Governor March 1, 1909.)

- Sec.
1. Office of state fire marshal; appointed by insurance commissioner; term of service.
  2. Deputy fire marshal.
  3. All fires exceeding fifty dollars damage to be investigated; fires of unknown origin to be inquired into.
  4. Investigation, five days after fire.

- Sec.
5. How fires shall be investigated and record kept.
  6. Supplemental investigations; examination of witnesses, etc.; may arrest for arson.
  7. Powers of state and deputy fire marshals; summons and pay of witnesses; private investigation and segregation of witnesses.

<p>Sec. 8. Empowered to administer oaths; penalty for false swearing. 9. Contemptuous witnesses may be summarily punished, fined or imprisoned. 10. Authority to enter buildings or premises. 11. May enter buildings on complaint. 12. Unsafe buildings and conditions dangerous to safety may be corrected. 13. Punishment for refusing to comply with orders of authorities. 14. Punishment for neglect of duty. 15. Salaries of state and fire marshals; travelling expenses. 16. Tax on insurance companies to maintain fund for paying expenses of department; state</p>	<p>Sec. not liable for salaries of fire marshal and deputy. 17. When tax on insurance companies may be omitted. 18. Statement of expenses to be filed with insurance commissioner. 19. Marshal cannot be engaged in any other business. 20. Annual report required. 21. Payment for reporting fires to state marshal. 22. Persons precluded from extra allowance. 23. State marshal and others under supervision and control of insurance commissioner; personal investigation by insurance commissioner.</p>
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*Be it enacted by the Legislature of West Virginia:*

Sec. 1. The insurance commissioner of this state is hereby authorized and empowered to appoint within thirty days after this act shall take effect, and every four years thereafter, a suitable person who shall be a citizen of this state, as state fire marshal, who shall hold office until his successor is appointed and qualified, the title of which office shall be state fire marshal.

Sec. 2. The insurance commissioner is also authorized to appoint one deputy fire marshal whose duties shall be to assist the state fire marshal, and in case of the absence or disability of that officer, shall perform the duties of the office.

Sec. 3. The state fire marshal and the chief of the fire department of every city or town in which a fire department is established and the mayor of every incorporated city or town in which no fire department exists, and the justice of the peace of every magisterial district outside of any city or town, shall investigate or cause to be investigated the cause, origin and circumstances of every fire occurring in such city, town or district by which property has been destroyed or damaged, when the damage exceeds fifty dollars, except that all fires of unknown origin shall be reported, and shall especially make investigation as to whether such fire was the result of carelessness, accident or design.

Sec. 4. Such investigation shall be begun within five days of the occurrence of such fire, and the state fire marshal or his deputy shall have the right to supervise and direct such investigation whenever he deems it expedient or necessary.

Sec. 5. The officer making investigation of fires occurring in cities, villages and towns shall forthwith notify said state fire marshal and shall within one week of the occurrence of the fire

furnish to the state fire marshal a written statement of all the facts relating to the cause and origin of the fire, and such further information as may be called for by the blanks furnished by said state fire marshal. The state fire marshal shall keep in his office a record of all fires occurring in the state, together with all facts, statistics and circumstances including the origin of the fires, which may be determined by the investigations provided by this act; such statistics shall be at all times open to the public inspection.

Sec. 6. The state fire marshal shall, when in his opinion further investigation is necessary, take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have any means of knowledge in relation to the matter as to which an examination is herein required to be made, and shall cause the same to be reduced to writing; and if he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, he shall cause such person to be arrested and charged with such offense, and shall furnish to the proper prosecuting attorney all such evidence, together with the copy of all names of witnesses and all the information obtained by him, including a copy of pertinent and material testimony taken in the case; and shall keep a record of the proceedings and the progress made in all such prosecutions for arson and the result of all cases finally disposed of.

Sec. 7. The state fire marshal and deputy state fire marshal shall each have the power in any county, of the state of West Virginia, to summon and compel the attendance of witnesses before them or either of them, to testify in relation to any matter which is by the provisions of this act, a subject of inquiry and investigation, and may require the production of any book, paper or document deemed pertinent thereto by them or either of them. Such witness shall be subpoenaed in the same manner as witnesses in circuit court. They shall receive the same compensation which shall be paid out of the fire marshal fund, upon vouchers signed by the state fire marshal, or deputy fire marshal, before whom any witnesses shall have attended, and such officer shall at the close of the investigation wherein such witness was subpoenaed certify to the attendance and mileage of such witness, such certificate shall be filed in the office of the state fire marshal. All investigations held by or under the direction of said state fire marshal, or his deputy, may, in his discretion, be private, and persons other than those



required to be present by the provisions of this act, may be excluded from the place where such investigation is held, and witnesses may be kept separate and apart from each other, and not allowed to communicate with each other until they have been examined.

Sec. 8. Said state fire marshal, and deputy state fire marshal are each hereby authorized and empowered to administer oaths and affirmations to any persons appearing as witnesses before them; and false swearing in any matter or proceeding aforesaid shall be deemed perjury and shall be punished as such.

Sec. 9. Any witness who refuses to be sworn, or who refuses to testify, or disobeys any lawful order of said state fire marshal, or deputy state fire marshal, in relation to said investigation, or who fails or refuses to produce any book, paper or document touching any matter under examination, or who is guilty of any contemptuous conduct, after being summoned to appear before them, or either of them, to give testimony in relation to any matter or subject under examination or investigation as aforesaid, may be summarily punished by the state fire marshal or deputy state fire marshal as for contempt by a fine in a sum not exceeding one hundred dollars or be committed to the county jail until such time as such person may be willing to comply with any reasonable order made by the said state fire marshal, or deputy fire marshal as provided by this act.

Sec. 10. Said state fire marshal and his deputy, or either of them, shall have the authority at all reasonable hours in performance of the duties imposed by the provisions of this act, upon complaint duly made, to enter upon and examine any building or premises where any fire has occurred, and other buildings or premises adjoining or near the same.

Sec. 11. The state fire marshal and deputy, upon complaint of any person shall have a right at all reasonable hours, for the purpose of examination, to enter into and upon all buildings and premises within their jurisdiction.

Sec. 12. Whenever the said officers shall find any building or other structure, which for want of repair, or by reason of age or dilapidated condition, or for any other cause is especially liable to fire, and which is so situated as to endanger other buildings or property, and whenever any such officer shall find in any building, or upon any premises, any combustible or explosive material, or inflammable conditions, dangerous to the safety of said buildings or premises, they shall have power to make reasonable orders for

the repair or removal of the same, and such order shall be forthwith complied with by the owners or occupant of said premises or building.

Sec. 13. Any owner or occupant of buildings or premises failing to comply with any reasonable order of the authorities, above specified, shall be punished by a fine of not less than ten dollars nor more than fifty dollars for each day's neglect, in any action to be brought by any of the officers above referred to in any municipal or justice court in the county where such owner or occupant is resident.

Sec. 14. Any officer referred to in section three of this act, who neglects to comply with any of the requirements of this act shall upon conviction be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars for each negelet or violation.

Sec. 15. The state fire marshal shall receive an annual salary of two thousand dollars and the deputy fire marshal shall receive an annual salary of fifteen hundred dollars. The state fire marshal shall be authorized to employ a stenographer or clerk and incur such other expenses as may be necessary in the performance of the duties of his office, including necessary traveling expenses, not to exceed, including salaries, such sum as may be paid into the state treasury in the manner hereinafter provided.

Sec. 16. For the purpose of maintaining the department of state fire marshal and paying all the expenses incident thereto, every fire insurance company doing business in the state of West Virginia, except farmers' mutual co-operative fire insurance companies or associations, shall pay into the state treasury within thirty days after the passage of this act, and on or before the first day of March annually thereafter in addition to the taxes now required by law to be paid by such company, one-fourth of one per cent. on the gross premium receipts of such companies on all business done in the state of West Virginia during the year next preceding, as shown by their annual statements under oath to the insurance department. The money so received into the treasury shall be set aside as a special fund for the maintenance of the office of state fire marshal, and the expenses incident thereto.

The state will not be liable in any manner for the salary of said fire marshal, deputy fire marshal, clerk or for maintenance of the office of fire marshal or any expenses incident thereto, and the

same shall be payable only from the special fund provided for in this section.

Sec. 17. Whenever at any time there shall accumulate in the special fund a surplus sufficient to maintain the department of the state fire marshal for the period of one year, then in the discretion of the state fire marshal, the foregoing special tax for such year may be omitted.

Sec. 18. The state fire marshal shall file in the office of the insurance commissioner an itemized statement of all expenses incurred by his department and all vouchers issued therefor shall be approved by the insurance commissioner, which said voucher shall be allowed and paid out of the fund provided for in section sixteen in the same manner as other claims against the state.

Sec. 19. The state fire marshal and the deputy fire marshal shall not engage in any other business, and shall at all times be ready for such duties as are required by this act.

Sec. 20. The state fire marshal shall submit annually as early as consistent with full and accurate preparation, a detailed report of his official acts to the insurance commissioner, which report shall be included in the annual report of the insurance commissioner to the governor as required by law.

Sec. 21. There shall be paid to the chief of the fire departments, and to mayors of cities and towns who do not receive to exceed fifty dollars annually as compensation for their services as such chiefs and mayor, and to justices of the peace, who are by this act required to report fires to the state fire marshal, the sum of two dollars for each fire reported to the satisfaction of the state fire marshal, and in addition thereto, mileage at the rate of five cents per mile for each mile traveled to and from the place of the fire. Said allowance shall be paid, after the same has been approved by the fire marshal, during the month of March of each year out of the funds provided for in section sixteen of this act.

Sec. 22. All chiefs of fire departments who receive a stated salary and devote their entire time to the duties of chief of the department, and mayors of cities and towns who receive a stated salary exceeding fifty dollars, shall be precluded from receiving any extra allowance for the report herein mentioned.

Sec. 23. The state fire marshal and his deputy and clerks shall be under the direct supervision and control of the insurance commissioner, who may remove from office such fire marshal, deputy

or clerks for cause at any time that such removal shall be deemed necessary for the good of the department. The headquarters of the fire marshal's department shall be in the office of the insurance commissioner, where all official matters pertaining to the department shall be referred, and no act of such fire marshal or deputy shall be valid without the consent and approval of the insurance commissioner.

Whenever it may seem necessary the insurance commissioner may personally visit and investigate any fire in accordance with the provisions of this act, and shall be repaid all expenses connected therewith out of the funds provided for in this act.

(House Bill No. 237.)

## CHAPTER 60.

AN ACT to amend and re-enact sections one, two, three, four, five, six, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen of chapter sixty-two of the code of West Virginia of one thousand nine hundred and six, and to add thereto sections twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four, all relating to the protection and preservation of certain animals, birds, and fishes and of forests and streams.

(Passed February 25, 1909. In effect ninety days from passage. Approved by the Governor March 1, 1909.)

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| <p>Sec.<br/>1. Forest, game and fish warden; term of office; compensation; report of mileage; deputy wardens, their compensation; ex officio deputy wardens, their jurisdiction and compensation.</p> <p>2. To have charge of certain public matters and powers therefor; biennial report to governor.</p> <p>3. Authority and duties of chief deputy and deputy wardens; ; penalty for violation of certain acts.</p> <p>4. Powers to arrest for violations;</p> | <p>Sec.<br/>5. penalty for neglect of duty.</p> <p>6. Seizure of fish, game or birds.</p> <p>6. Bonds required from certain officers.</p> <p>10. Stationery and postage; how provided; how paid for.</p> <p>11. May employ attorney to aid in prosecutions.</p> <p>12. Powers to search persons, cars, etc.</p> <p>13. Court or justice shall issue search warrant, sale of goods seized; disposition of proceeds of sale.</p> |
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| <p>Sec.<br/>14. Right to summon aid in making arrest; penalty for refusal to act; arrests on Sunday.</p> <p>15. Reports of deputy wardens; ex officio wardens; justices; when made.</p> <p>16. Penalty for false return as to moneys collected.</p> <p>17. Penalty for interference with wardens.</p> <p>18. Title to wild game, etc., in state.</p> <p>19. License to hunt; how procured; license fees; to whom paid; penalty for failure to produce license; owners of land may exchange hunting privileges; consent of guardian required for minors; penalties for violation of section.</p> <p>21. Penalty for transfer or sale of license.</p> <p>22. Closed season; open season.</p> <p>23. Game animals; what are considered.</p> <p>24. When unlawful to have in possession; when lawful.</p> <p>25. Deer; when to kill; shall not chase with dogs; penalties for transportation of game beyond limits of state.</p> <p>25a. Rabbits, when unlawful to kill or injure in certain counties; seasons for killing certain animals and birds; number allowed killed; unlawful to trap, snare, etc.; penalty for violation of section; may capture for purpose of propagation.</p> <p>27. Unlawful to catch by seine, trap, etc.</p> <p>28. Unlawful to hunt, kill or pursue on Sunday; penalty for violations.</p> <p>29. Prosecutions to be in name of state; fee allowed prosecuting attorney.</p> <p>30. Witnesses; when incompetent.</p> <p>31. Moneys collected for violations; how disposed of.</p> <p>32. Requisition and extradition expenses.</p> <p>33. What considered game birds.</p> <p>34. Destruction of eggs and nests.</p> <p>35. Shall not transport.</p> <p>36. Penalty for violations sections 33, 34, 35.</p> <p>37. Right to take birds, etc., for scientific purposes.</p> <p>38. Certificate to collect birds, etc.; to and by whom issued; how secured; fee to be paid; penalty for violations.</p> <p>39. Certificate; when expires; not transferable.</p> <p>40. Birds not protected.</p> <p>41. Wild non-game birds as domestic pets.</p> | <p>Sec.<br/>42. Accidental shooting of human being or live stock; penalty for.</p> <p>43. No open season for certain birds; penalty for violation of section.</p> <p>44. Fish; how can catch; where can seine; when; registry of seine; length of fish caught; how to measure; certain seasons in certain counties; lawful to catch fish of sucker variety; owners may take from private pond; letting water out of pond; penalty therefor; erection of trespass signs; penalty for violation of provisions of section.</p> <p>45. Lawful to destroy nets, traps, etc.; unlawful to have seines in possession; penalty provided; obstruction of water course; construction of ladder under supervision; violation of provision; time limit construction of ladder or way.</p> <p>46. Unlawful to employ for purpose of killing; serving by hotel; penalty.</p> <p>47. Use of dynamite, etc.; penalty.</p> <p>48. Unlawful to sell explosives for purpose of killing; penalty therefor.</p> <p>49. Unlawful to build fires in connection with hunting, etc.; permission in writing; from whom; penalty for violation; owner et al may arrest.</p> <p>50. Unlawful to shoot across public road; near school house; on lands of another; near occupied dwelling house; penalty.</p> <p>51. Warden shall be ex officio fire warden; deputies to extinguish fires; means used; may hire volunteers; forfeit for refusal to serve; report origin of fires; amount expended putting out.</p> <p>52. Deputy wardens; compensation of; services at forest fires; court to fix wage; charge against county; statement of deputy to county court.</p> <p>53. Fires built in forest; failure to extinguish; penalty for violation; wilful firing of woods; penalty.</p> <p>54. Railroad right of way; removal of inflammable materials; when; shall provide spark arresters; prevent escape of fire from furnace; shall not deposit ashes on tracks or right of way; trainmen to report fires; to whom; violation of provision by employee; penalty.</p> <p>55. Warden to recover damages; no bar to right of individuals to recover.</p> <p>56. Inconsistent acts repealed.</p> |
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*Be it enacted by the Legislature of West Virginia:*

That sections one, two, three, four, five, six, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nine-

teen, of chapter sixty-two of the code of West Virginia of one thousand nine hundred and six, be amended and re-enacted and that sections twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four, be added to said chapter and enacted as a part thereof, so as to read as follows:

Sec. 1. The governor shall between the first day of June and the first day of July, one thousand nine hundred and nine, appoint some person, a citizen of this state, whose term of office shall begin on the first day of July, one thousand nine hundred and nine, to the office of forest, game and fish warden. Said warden shall hold his office for four years and until his successor has been appointed and qualified, unless sooner removed for cause by the governor. He shall receive for his services the sum of eighteen hundred dollars per annum, to be paid out of the treasury, quarterly, after being duly audited; and shall be allowed mileage of three cents a mile while traveling by railroad or steam-boat, and ten cents a mile while traveling otherwise than railroad or steam-boat, for the distance necessarily traveled while actually in the discharge of his official duties as such warden. *Provided, however,* that the mileage expenses of said warden shall be reported quarterly under oath to the governor and approved by him; and *provided, further,* that such mileage expenses shall not, in any one year exceed five hundred dollars. Said warden shall devote all his time to the discharge of the duties of his office, imposed upon him by law. Said warden shall appoint two persons who are citizens of this state and one of whom shall reside in the eastern section of the state, chief deputy wardens of forests, game and fish, said chief deputies shall hold their office at the pleasure of the warden appointing them. Said chief deputies shall each receive for their service, the sum of nine hundred dollars a year, to be paid out of the treasury quarterly after being duly audited, and shall be allowed mileage of three cents a mile while traveling by railroad or steamboat, and ten cents a mile while traveling otherwise than by railroad or steamboat, for the distance necessarily traveled for the purpose of performing the duties imposed upon them by law, and they shall de-

vote all their time thereto, such mileage expense of either of said chief deputies, shall be reported quartely under oath to the warden and approved by him, and forwarded to the governor and approved by him; *provided, however*, that said mileage in any one year, shall not exceed four hundred dollars to each chief deputy warden. The warden shall appoint such persons as he may deem fit, who are citizens of this state, to act as deputy wardens in the several counties of this state. Said deputy wardens shall hold their office at the pleasure of the forest, game and fish warden. The sheriffs, deputy sheriffs and constables in the several counties of this state shall be *ex officio* deputy wardens therein, and the chiefs of police of the cities, towns and villages of this state shall also be *ex officio* deputy wardens therein and their jurisdiction shall extend no further than their respective counties, cities, towns and villages. All said deputy wardens, either appointed or *ex officio*, shall receive for their services one-half of the fines imposed by any justice or court having jurisdiction, and collected in each prosecution instituted by any such deputy warden, and the other half of such fine shall be paid to forest, game and fish warden, who shall pay the same over to the treasurer of the state, to be credited by him as other fines are credited; but no fees or moneys shall be paid any deputy for services rendered as such deputy warden, out of the treasury of this state, and in any prosecution under this chapter, section two of chapter thirty-six of the code of one thousand eight hundred and ninety-nine and section one thousand one hundred and fifty-nine of the code of one thousand nine hundred and six shall not apply to any warden.

Sec. 2. The forest, game and fish warden shall have general charge of the following public matters. and necessary powers therefor. The collection and diffusion of such statistics, literature and information as he may deem useful in regard to the protection of forest and the protection and propagation of game and fish, the publishing thereof, and the taking charge of and keeping all reports, books, papers and documents which shall, in the discharge of his duties hereunder, come into his possession and control, and the institution of all proper legal proceedings to enforce the provisions of law, now in force, or hereafter enacted, in reference to forests, game and fish. Said warden shall, on or before the first day of January, one thousand nine hundred and eleven, and biennially thereafter, submit to the governor, a detailed report

showing what has been done by him during the preceding biennial period, the amount of all moneys received by him and from what sources, in detail, a complete inventory of all game and other property seized and sold, and the amount received therefor, and the amount of disbursements in detail. The books and vouchers of said warden shall be subject to examination by the auditor of the state at all times.

Sec. 3. The chief deputy and deputy wardens shall act and be under the direction and supervision of said forest, game and fish warden. Said chief deputy and deputy wardens shall have authority, and it shall be their duty to enforce the game, fish and forest laws of this state, now in force or hereafter enacted, for the protection of forests and protection, preservation and propagation of game, fish and birds, and shall be immediately responsible to the warden, and shall report all matters under their jurisdiction, whenever requested by him and receive instructions from him. It shall be unlawful for any deputy warden, either appointed or *ex officio*, to settle, compromise or adjust any prosecution under this chapter and to receive moneys from any violator or alleged violator of any of the provisions thereof, unless the same are moneys received in the payment of fines imposed in due process of law by a justice or court having jurisdiction of the offense charged, and if any such deputy warden shall receive any moneys from any such violator or alleged violator, either as such settlement and compromise or to prevent any prosecution therefor, such deputy warden shall be guilty of a felony and upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years.

Sec. 4. The forest, game and fish warden, and appointed deputy wardens shall have full power to execute and serve any warrant or process of law, issued by any justice of the peace or by any court having jurisdiction under the law, relating to game, fish, birds and forests, in the same manner as any constable or sheriff might serve or execute such process, and may arrest on sight without a warrant, any person or persons, detected by them, actually violating any of the provisions of the laws of this state relating to the game, fish, birds and forests, and may take such person or persons, so offending, before any court, or justice of the peace, having jurisdiction of the offense, and make proper complaint before such court, or justice, which shall proceed with the case in the manner as provided by law. Any such appointed warden, who on receiving in-



formation from a reliable person, of the violation of the game, fish or forest laws, neglects or refuses to thoroughly investigate such alleged violation, and apprehend or attempt to apprehend the offender, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten dollars nor more than fifty dollars for each offense.

Sec. 5. The warden and deputy wardens shall seize and take possession of, on sight and without process, any fish, game or birds, found in the possession of any person or persons, or corporation which is so in possession contrary to law.

Sec. 6. The forest, game and fish warden and the chief deputy wardens, shall each, before entering upon the discharge of their respective duties, execute a bond, the warden in the penalty of three thousand dollars, and the chief deputies in the penalty of one thousand dollars with security therein to be approved by the governor, and conditioned for the faithful performance of their duties, and to account for and pay over all moneys and property coming into their hands, due and belonging to the state, which said bonds, after having been approved by the governor, shall be deposited with the auditor.

Sec. 10. The forest, game and fish warden shall be allowed all necessary printing, printed blanks, stationery and postage; but before he shall incur any expense for printing, he shall first make requisition therefor upon the governor, who, in his discretion, approving the same, shall issue his warrant to the warden for said printing, the cost and expense therefor to be paid out of the state treasury.

Sec. 11. The forest, game and fish warden and deputy wardens may make complaint and cause proceedings to be instituted against any person or persons, or corporation, for the violation of any of the game, fish, bird and forest laws, without the sanction of the prosecuting attorney of the county wherein such proceedings are instituted; and in all such cases they shall not be required to give security for costs. Any of said officers may also appear in any court of competent jurisdiction in this state, in any case for violation of any of the laws for the protection of forests, or the protection, preservation and propagation of game, fish and birds, and prosecute the same in the manner and with the same authority, as the prosecuting attorney of the county in which such proceedings are had. And in such cases they may, in the event of the re-

fusal or neglect of the prosecuting attorney to act, employ an attorney of their choice, and to such attorney, or to the prosecuting attorney if he shall act, there shall be taxed in the costs, upon conviction, a fee of ten dollars in such case.

Sec. 12. The forest, game and fish warden and deputy wardens, shall have the power to search any person and examine any boat, vehicle, conveyance, express car, railroad car, fish box, fish basket, game bag or game coat, or any other receptacle in which game, birds or fish could be placed, concealed or conveyed, whenever they have reason to believe that they will secure or discover evidence of a violation of the game and fish laws of this state; and any hindrance or interference, or attempt to hinder or interfere, with such search and examination, shall be *prima facie* evidence of a violation of the law by the person or persons who hinder or interfere, or attempt to hinder or interfere, with such search and examination. Said officer, or officers, shall, at any and all times, seize and take possession of any and all game, fish, birds and animals, which have been caught, taken or killed at any time, in any manner or for any purpose, or had in possession or under control or have been shipped, contrary to any of the laws of this state. Such search and seizure may be made without warrant; and the warden or deputy wardens shall not be liable for false seizure of such birds, game or fish.

Sec. 13. That any justice or court having jurisdiction of the offense, upon receiving information of probable cause for believing that any game, birds or fish, caught, taken, killed, had in possession, under control, or shipped, or about to be shipped, contrary to, or in violation of any of the laws of this state, shall issue a search warrant, and cause a search to be made, in the manner provided by law, in any place, and to that end may cause any building, dwelling house, enclosure, or car to be entered forcibly, if necessary, and any apartment, chest, barlocker, refrigerator, crate, basket or package, broken open and the contents thereof examined by the forest, game and fish warden or deputy wardens. All game, fish or birds, seized by any of said officers, shall be sold under the direction of the justice, or court before whom the offense is tried, or search warrant issued, and the proceeds of all sales shall be paid into the treasury of the state.

Sec. 14. Any of the officers herein, whose duty it is to enforce the game, fish, bird and forest laws of this state, shall have the

same right and power as sheriffs to summon aid in making arrests, seizures, or executing any process; and any person, or persons, so summoned, and refusing to act, shall be liable, upon conviction, to the same fines and penalties, the same as if summoned by a sheriff. Such arrests may be made on a Sunday, in which case the person, or persons arrested shall be taken before a justice, having jurisdiction, and proceeded against as soon as may be on a week day following such arrest.

Sec. 15. The appointed deputy wardens shall, on the first of the months of February, June, September and December of each year make a report under oath to the forest, game and fish warden which reports shall show in detail, the work done by them severally during the three months next preceding. The forest, game and fish warden shall furnish the deputy wardens all necessary blank forms and stationery for making said reports. All such reports shall show an account of the suits commenced, the justice or court before whom such proceedings were had, the number and kinds of game, fish, birds and property seized, and what disposition was made of the same, the amount of proceeds of sale, and the amount of money, if any, received by him for fines imposed, or from any other source provided for by this chapter. All *ex officio* deputy wardens shall make a report to the forest, game and fish warden on the first day of February, June, September and December of each year if they have instituted any proceedings or collected any moneys under the provisions of this chapter during such preceding three months, and all deputy wardens shall within thirty days after its receipt pay over to the forest, game and fish warden the fines collected by him, and the bonds of all *ex officio* wardens shall be liable for any such moneys received by them. All justices and judges before whose courts any case under this chapter comes shall on the first day of February, June, September and December, of each year, if there has been before this court any case under this chapter, report to the state forest, game and fish warden all money collected by him and the status of all cases pending or started in his court.

Sec. 16. The forest, game and fish warden and deputy wardens, or any other officer who shall make any false return as to moneys collected or disbursed by him, as provided for in this chapter or does not pay over to the proper officer as provided in this chapter, moneys collected by him for fines, shall be deemed guilty of a

felony, and upon conviction thereof shall be confined in the penitentiary not less than one year nor more than five years.

Sec. 17. Any person who hinders, obstructs or interferes with, or attempts to hinder, obstruct or interfere with, the forest, game and fish warden and deputy wardens in the discharge of any of their respective duties herein, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred dollars, together with the costs of the prosecution, and in default of payment thereof shall be confined in the county jail until said fines and costs are paid; *provided, however*, that such imprisonment shall not exceed ninety days.

Sec. 18. The ownership of, and the title to, all wild game, wild birds, both resident and migratory, and all fishes in the state of West Virginia, are hereby declared to be in the state, and no such game, birds, or fishes shall be taken or killed in any manner, or at any time, except the person so taking or killing the same, shall consent that the title thereto shall be and remain in the state of West Virginia, for the purpose of regulating the use and disposition of the same after such taking or killing. The taking or killing of wild game birds or fishes, at any time or in any manner or by any person, shall be deemed a consent of such person that the title thereto shall be and remain in the state, for the purpose of regulating the use, and disposition of the same.

Sec. 19. No person, or persons, shall, at any time, hunt, pursue, kill or catch any wild game animals, or wild game birds in this state, without first having secured a license so to do, and then only during the respective periods when it shall be lawful to hunt such game animals and game birds. Such license shall be procured in the following manner, to-wit: The applicant shall go before the county clerk of the county and fill out a blank application, stating his name, age, occupation or profession, weight, height, place of residence, color of hair, eyes and complexion; the application shall be subscribed in ink and sworn to by the applicant, that his statements are correct and true to the best of his knowledge and belief, before the county clerk issuing said license; the applicant, if a non-resident of this state, or unnaturalized foreign born resident, shall pay to said county clerk the sum of fifteen dollars, as a license tax, and a fee of fifty cents to said clerk for issuing such license, if the applicant is a *bona fide* resident citizen of this state, he shall pay to the

county clerk issuing such license, the sum of seventy-five cents as a license tax, and a fee of twenty-five cents to said clerk as his fee for issuing such license, *provided*, that such *bona fide* resident may fill out said application and swear to the same before a notary public or justice of the peace in the county of his residence and send same to the county clerk, together with such tax fee, and such clerk shall send him such license. Said license shall bear the seal of the county court of the county in which same is issued and signed by the clerk. All such license taxes shall be paid by the county clerk to the state treasurer on the first day of each month for the next month preceding. Such license shall entitle the person to whom it is issued, to hunt and kill game in any county within this state at any time when it shall be lawful to hunt, pursue and kill such game; and no person to whom such license has been issued, shall be entitled to hunt, pursue or kill game in this state, without at the time of such hunting, pursuing or killing of game, he shall have such license in his possession; and he shall exhibit the same to any officer of this state, or owner, tenant or lessee of any land on which such person, or persons are hunting, on demand. All such licenses shall be good and valid for the period of one year next succeeding its issue. The carrying of any uncased gun in any of the fields or woods of this state, by any person not having the lawful right to hunt, pursue or kill game, birds or animals in such fields or woods, shall, as to such person, other than the *bona fide* owner, or owners of such fields or woods, his or their child or children, tenant or tenants, lessee or lessees, be deemed *prima facie* evidence of a violation of this section; and any person claiming to hold a license to hunt in this state, having in his possession any gun or other hunting paraphernalia in such woods, or fields, shall, on failure to produce such license for inspection to any warden of this state or owner or agent of the owner of such woods and fields on demand, be deemed guilty of a misdemeanor and shall be punished on conviction, as provided later in this section. *Provided, however*, that any resident owner, or owners, of farm lands, their resident child or children, or *bona fide* tenants, shall have the right to hunt, kill and pursue birds or game on such farm lands of which he, or they, are the *bona fide* owners or tenants, during the season when it is lawful to kill, catch or pursue birds or game, without securing such resident license; and *provided, further*, that the owners of ad-

joining lands may each have the privilege of reciprocating the non-licensed privilege, by giving each other written privilege to exchange hunting rights only, on land immediately joining each other, and upon which each party resides. All non-resident members of any club or organization owning or leasing a game preserve, in this state, shall each be required to secure a non-resident hunter's license. Any person found guilty of violating any of the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than fifty dollars for each and every offense, in addition to the costs of the prosecution, and in addition thereto may be confined in the county jail for a period not exceeding thirty days, in the discretion of the justice or court trying the case, and upon failure of payment of fine and costs the person, or persons convicted, shall be confined in the county jail until such fine and costs are paid, but such imprisonment shall not exceed twenty days for any one offense. No hunter's license shall be issued to any minor under the age of fifteen years, without the consent in writing from the parent or guardian of such minor, such consent to be filed by the clerk issuing such license.

Sec. 21. Any person who shall, at any time, alter or change in any manner, or loan, sell or transfer to another, any license provided for in section nineteen of this chapter or the person buying or borrowing such license, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than twenty nor more than fifty dollars and in addition thereto, may be confined in the county jail not more than thirty days.

Sec. 22. The words "close season," and "close time," shall mean the time or period during which it is unlawful to hunt, pursue, catch, shoot, wound, trap or destroy any bird or animal, or to fish for or catch any fish, and the words "open season" and "open time," shall mean the open time or period during which it shall be lawful to take these animals, birds and fish, as specified and limited by law.

Sec. 23. For the purposes of this chapter the following are considered game animals, to-wit: deer and squirrel. And the following shall be considered game birds, to-wit: The anatadae, commonly known as ducks, geese, swan and brant; the rallidae, commonly known as mud hens, rails, coots, and gallinules; the limicolae, commonly known as shore birds, plover, snipe, woodcock, tattlers, cur-

lews, ortolau, sandpiper; and gallinae, commonly known as wild turkey, ruffed grouse or pheasant, quail or bob white.

Sec. 24. It shall be unlawful for any person to buy, sell or have in possession any of the animals, wild fowl or birds mentioned in section twenty-three of this chapter, at any time when the killing, trapping, netting and snaring of such animals, wild fowl or birds shall be unlawful, or which shall have been killed, trapped, netted or snared contrary to the provisions of this chapter. And it shall further be unlawful for any person, or persons, firm or corporation, at any time, to purchase or offer to purchase, or to sell or expose for sale, or have in his, or their possession for the purpose of selling, any quail, ruffed grouse, or pheasant, woodcock, wild turkey, wild geese, swan, brant, wild ducks of any kind, plover, snipe, sandpiper, squirrel, deer or venison; trout of any species, salmon of any species, pike, bass or silver perch or any of the birds, fish or game prohibited to be caught or killed at any time by the provisions of this chapter, and it shall be unlawful for any person or persons, firm or corporation, or common carrier, to receive for transportation, or to transport, carry or convey, any quail, ruffed grouse or pheasant, woodcock, wild turkey, wild geese, swan, brant, wild ducks of any kind, plover, snipe, sandpiper, squirrel, deer or venison or game fishes mentioned in this section, that shall have been caught, snared, taken, trapped or killed at any time, within the limits of this state, knowing, or having reason to believe, the same had been sold, or to transport, carry or convey the same outside of this state for any purpose; *provided*, that it shall be lawful to have any such game animals, birds or fishes in possession for a period not exceeding twenty days after the open season thereof is ended and the close season thereon has begun. Any person, or persons, firm or corporation, guilty of violating any of the provisions of this section, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars for each and every offense, and the costs of the prosecution. And in default of the payment of such fine and costs, shall be confined in the county jail until the same is paid, not to exceed, however, the period of sixty days. The selling, exposing for sale, having in possession for sale, transporting or carrying and conveying, contrary to the provisions of this section, of each and every animal, fish or bird mentioned in this section, shall constitute a separate offense.

Sec. 25. No person shall hunt, chase, kill or wound any deer, from the first day of December until the fifteenth day of October following, of any year, except tame deer owned by the person killing the same; nor shall any one person kill more than two deer in any one season. No person, or persons, shall chase or hunt deer with dogs in this state at any time. No person shall at any time kill any fawn, doe or any other deer than bucks with horns or antlers over four inches in length, or have the fresh skin of any fawn in his possession. No person shall at any time, kill or have in his possession, any deer, quail, pheasant or ruffed grouse, wild turkey, squirrel, or any part of the same, or game fishes with the intention of sending or transporting the same or having the same sent or transported beyond the limits of this state. Any person violating any provision of this section shall be guilty of a misdemeanor and on conviction thereof, shall be fined not less than twenty-five nor more than fifty dollars for each and every deer unlawfully hunted, chased, wounded or killed, and for each fawn's skin had in possession, and not less than twenty dollars nor more than fifty dollars for each and every quail, ruffed grouse or pheasant, wild turkey, or any part of the same, for each and every game fish, and for each and every deer or part of a deer, killed or had in possession with the intention of sending or transporting the same, or having the same sent or transported beyond the limits of this state. And in addition to the fine, or fines, prescribed in this section, the person, or persons convicted, may be confined in the county jail not to exceed sixty days for each and every offense; and upon default of the payment of the fine and costs, shall be confined in the county jail until the same are paid, but not to exceed a period of sixty days.

Sec. 25-a. It shall be unlawful for any person to chase, catch, kill or injure, or pursue with the intent to chase, catch, kill or injure, any rabbit between the twentieth day of December and the first day of November, both dates inclusive of the following year, in the counties of Brooke, Hancock, Ohio, Marshall, Harrison and Marion. Any person violating any of the provisions of this section, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than ten dollars nor more than twenty-five dollars for each offense, and in the discretion of the justice or court trying the case, be imprisoned in the county jail for a period not exceeding thirty days for each offense; and in



default of the payment of the fine and costs, the person convicted shall be confined in the county jail for a period not exceeding twenty days unless such fine and costs be sooner paid.

Sec. 26. It shall be unlawful for any person to catch, kill or injure, or pursue with the intent to catch, kill or injure, any ruffed grouse or pheasant, or wild turkey between the first day of December and the fifteenth day of October of the following year; or any quail or Virginia partridge between the first day of December and the first day of November following; nor any gray, black, red or fox squirrel between the first day of December and the thirty-first day of August, both inclusive, of the following year. Nor shall any one person kill more than twelve quail or six ruffed grouse or two wild turkeys in any one day, nor more than ninety-six quail or twenty-five ruffed grouse or six wild turkeys in any one open season. No person shall kill any wild duck, wild goose or brant, between the twentieth day of April and the first day of September; *provided*, that the wood duck shall not be killed at any time within this state; woodcock, plover, rail, ortolau or sand-piper between the twentieth day of December and the fifteenth day of July following; or any snipe between the first day of March and the fifteenth day of October following.

It shall be unlawful for any person at any time to catch by seine, net, bait, trap or snare of any kind, or device, any wild turkey, ruffed grouse or pheasant or quail.

Any person violating any of the provisions of this section, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than fifty dollars for each offense, and in the discretion of the justice or court trying the case, be imprisoned in the county jail, for a period not exceeding thirty days for each offense; and in default of the payment of the fine and costs, the person convicted be confined in the county jail for a period not exceeding thirty days, unless such fine and costs be sooner paid. *Provided, however*, that the forest, game and fish warden or deputy wardens, or other persons, under the direction of the warden may capture by any means, any of the game birds or game animals to keep them alive for propagation purposes. And *provided, further*, that the warden may give written permission to any responsible person, as provided by section thirty-eight of this chapter.

Sec. 27. It shall be unlawful for any person at any time to

catch, by seine, net, bait, trap or snare of any kind or device, any wild turkey, ruffed grouse or pheasant or quail.

Sec. 28. It shall be unlawful to hunt, catch, kill or injure or pursue with intent to hunt, catch, kill or injure, any wild animals or birds, or fish, on the first day of the week, commonly known as Sunday.

Any person violating any of the provisions of this section or section twenty-seven hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten dollars nor more than twenty-five dollars, and in default of the payment of fine and costs, be committed to the county jail for a period of not more than thirty days, unless said fine and costs are sooner paid.

Sec. 29. All prosecutions under this chapter shall be in the name of the state of West Virginia, before any court or justice having jurisdiction, and the justice shall have concurrent jurisdiction with the circuit and other courts in all misdemeanors, and in any case in which the prosecuting attorney appears, a fee of ten dollars shall be allowed him, to be taxed as a part of the costs of the case, and collected off the defendant, in case he is convicted.

Sec. 30. Every person called as a witness in any case for the violation of any of the provisions of this chapter, shall be compelled to testify fully; but his testimony shall not be given in evidence against him in any prosecution for such offense; and no person against whom such witness shall so testify, shall be competent as a witness for the state, in the prosecution against such witness for the same offense or matters to which said witness so testified, nor for any violation of any provisions of this chapter, alleged to have been committed before the commencement of the prosecution in which he is examined as such witness.

Sec. 31. All moneys collected and due the state, under and by virtue of the provisions of this chapter, shall be disposed of, as follows: The net proceeds of all fines collected from convictions of the violations of any section of this chapter, shall after the payment of the amounts fixed by this chapter to the proper deputy wardens and the costs as provided by law, be paid into and credited to the "school fund" of the state, as provided by the constitution; all other moneys due the state by virtue of any of the provisions of this chapter shall be paid into the state treasury and credited to the "forest, game and fish protective fund."

Sec. 32. In all cases where any person has been indicted for the violation of any of the provisions of this chapter, and has escaped or removed to another state, all costs of requisition and extradition papers and all other costs and expenses of securing and bringing such person back into this state, shall be charged as a part of the costs of prosecution against such person; and if such costs of requisition and extradition papers and expenses cannot be secured from such person, they shall be paid out of the "forest, game and fish protective fund."

Sec. 33. That no person shall, within the state of West Virginia, kill or catch or have in his or her possession, living or dead, any wild bird other than a game bird; or purchase, offer or expose for sale, transport or ship within or without the state, any such wild bird after it has been killed or caught, except as permitted by this chapter. No part of the plumage, skin, or body of any bird protected by this section shall be sold or had in possession for sale, irrespective of whether said bird was captured or killed within or without the state. For the purpose of this chapter all the birds and species of birds named in section twenty-three of this chapter only, shall be considered game birds.

Sec. 34. No person shall, within the state of West Virginia take or needlessly destroy or attempt to take or destroy, the nest or the egg; of any wild bird other than a game bird, or have such nest or eggs in his or her possession, except as permitted by this chapter.

Sec. 35. No person or persons or any corporation acting as a common carriers, its officers, agents or servants, shall ship, carry, take or transport, either within or beyond the confines of the state, any resident or migratory wild non-game bird.

Sec. 36. Any person violating section thirty-three, thirty-four and thirty-five shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than ten nor more than fifty dollars and may be confined in the county jail at the discretion of the court or justice, for a period of not more than thirty days.

Sec. 37. Sections thirty-three, thirty-four and thirty-five of this chapter, shall not apply to any person holding a certificate giving the right to take birds, their nests, or eggs for scientific purposes only, as provided for in section thirty-eight of this chapter.

Sec. 38. Certificate may be granted by the forest, game and fish warden, to any properly accredited person of the age of fifteen

years or upwards, permitting the holder thereof to collect birds, their nests, or eggs for scientific purposes only; the applicant for same must present to said officer, written testimonials from two well-known ornithologists, who must be residents of West Virginia, certifying to the good character and fitness of said applicant to be entrusted with such privilege; must pay said officer one dollar to defray the necessary expenses attending the granting of such certificate, on proof that the holder of such certificate has killed any bird or taken the nest of any bird for other than strictly scientific purposes, his certificate shall become void and he shall be liable to a fine not exceeding one hundred dollars or imprisonment not exceeding thirty days or both, at the discretion of the court.

Sec. 39. The certificates authorized by section thirty-seven of this chapter, shall expire on the thirty-first day of December of the year issued, and shall not be transferable.

Sec. 40. The English or European house sparrow, owls, hawks, eagles, crows and king fishers are not included among birds protected by this chapter.

Sec. 41. Nothing in this chapter shall prevent a citizen of West Virginia from taking or keeping any wild non-game bird in a cage as a domestic pet; *provided*, that such bird shall not be sold or exchanged, or offered for sale or exchange, or transported out of this state.

Sec. 42. Whoever, while engaged in hunting or pursuing wild game or game birds, negligently or carelessly shoots or wounds or kills any human being, or any live stock, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not exceeding one thousand dollars, and, in the discretion of the court trying the case, be confined in the county jail for a period of not exceeding one year.

Sec. 43. There shall be no open season on the following named game birds; Hungarian partridge, Reeve's pheasant, English pheasant, Lady Amherst's pheasant, Chinese pheasant, caporeailzie or any other foreign game birds introduced into this state, by the wardens or any person or persons, or association. It shall be unlawful for any person to catch, kill or injure, or pursue with intent to catch, kill or injure, any of the species of the game birds mentioned in this section. Any person violating any provision of this section shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than twenty-five dollars nor more

than fifty dollars, and, in the discretion of the court or justice trying the case, be confined in the county jail for a period of not more than sixty days; and upon default of the payment of fine and costs, he shall be confined in the county jail not less than twenty days, unless said fine and costs are sooner paid. Each bird shall constitute a separate offense.

Sec. 44. It shall not be lawful for any person to catch or destroy any of the fish in the creeks or rivers in this state by means of a drag, or other net, fish pots, weirs, traps, by sledging, shooting or other devices (except by hook or line) at any time; *provided, however,* that any person may set a trot line, the hooks on which shall not be less than two feet apart, and, that seines may be used in the Ohio river from the fifteenth day of November to the first day of March following, but each seine so used, must be registered by the owner or user with the forest, game and fish warden and the size of mesh must be two inches from knot to knot. Nor shall it be lawful for any person to catch and have in his possession, any jack salmon, commonly called jack fish, or any white salmon of less than seven inches in length, or any pike of less than ten inches in length, or any black bass less than seven inches in length or any trout less than five inches in length, or any fish caught out of season or caught in any manner prohibited by law. And all fish less than the length prescribed herein, shall be returned to the water immediately with as little injury as possible.

And the measurement of fish shall be from the end of nose to center fork of tail. It shall be unlawful to take or destroy any jack salmon, (commonly called jack fish or white salmon) in any manner, between the fifteenth day of April and the fifteenth day of June of each year; or to catch or destroy any trout or land-lock salmon in any manner, between the first day of September and the first day of April of each year. It shall not be lawful for any person to catch any black bass, green bass, willow bass, rock bass, pike or pickeral, or wall eyed pike (commonly know as salmon), between the fifteenth day of April and the fifteenth day of June of each year; except that in the counties of Brooke, Hancock and Ohio, the time shall be from April fifteenth to May twenty-ninth of each year; nor shall any person catch or kill any of said fishes or fish. at any other time during the year, save only with a rod, hook or line.

It shall be lawful to catch fish of the sucker variety known as

suckers, carp, mullet, and red horse, by gig, spear looping or in any other way at any time; it shall be unlawful to kill bass or any other game fish by spear, gig, shooting or skipping or jumping.

It shall not be lawful for any person to catch or destroy fish in any dam or pond the property of any person, except with the consent of the owner of such dam or pond, unless such dam or pond be in some of the rivers in this state. But nothing in this chapter shall be construed as to prevent the catching of minnows or other small fish, except salmon, bass, shad and trout, by means of hand, or cast nets, to be used for angling or scientific purposes; nor to prevent the warden of the state or his deputies or any person with their or his consent from catching any fish at any time with nets or seines for the purpose of propagation or stocking other waters, nor to prevent any person from taking in any way fish from his private dam, spring or pond at any time.

Any person who shall knowingly and wilfully let the water out of any pond mentioned herein, with the intent to take or injure fish therein, shall be guilty of a misdemeanor and shall be punished, upon conviction, by imprisonment in the county jail not less than one month nor more than six months, or by a fine not less than fifty nor more than two hundred dollars, or by both fine and imprisonment.

The owners or those in control of lands or rights in land, in or bordering upon any pond designated in this act, shall have erected and maintained in a conspicuous place along those ponds, when they are unenclosed, a sign at least a foot square and which shall have thereon the name of the party in control and the words "Tresspassers warned off under penalties of the law." Any person who shall wilfully and wrongfully tear down, deface or injure the boards provided for in this section, shall be guilty of a misdemeanor and liable to a penalty as hereinafter provided.

Any person violating any provision of this section, except as otherwise herein provided, shall be guilty of a misdemeanor and for every conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars and may, at the discretion of the court or justice trying the case, be confined in the county jail not exceeding thirty days.

Sec. 45. It shall be lawful for any person at any time to remove or destroy any nets, traps or other devices placed in any creeks, runs or rivers within this state, except registered seines in the Ohio river, as provided for in this chapter, and the person

or persons claiming ownership or possession of such nets, seines or other devices, shall have no recourse at law against the party destroying the same.

It shall be unlawful for any person or persons to be found upon the creeks or small streams of this state where fish are taken with seines, (except minnow seines) in their possession, and if so found, such possessor shall be *prima facie* evidence that the same were used unlawfully. In all prosecutions under this act it shall be *prima facie* evidence sufficient on the part of the state, to show that the defendant was found upon the creeks or small streams where fish are taken with such seine in his possession.

Any person violating any of the above provisions of this section, shall be guilty of a misdemeanor and upon conviction thereof, shall forfeit such net or seine (which net or seine shall be destroyed by order of the justice or court), and pay a fine of not less than ten dollars nor more than fifty dollars or be confined in jail not exceeding thirty days.

And no person, firm or corporation shall build, erect, keep or maintain any dam or anything in any river, creek or water course in this state, which shall in any way or manner prevent or obstruct the free and easy passage of fish up or down such river, creek or other water course, without placing, building or erecting on such dam or other thing, a good and sufficient ladder or way, so planned or built, as to allow all fish to easily ascend or descend the same; and said ladder or way shall be constructed upon plans and in a manner and at a place satisfactory to the forest, game and fish warden of the state of West Virginia. Any person, firm or corporation violating this provision shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than ten dollars nor more than fifty dollars; and each week shall constitute a separate offense; *provided*, that any person, firm or corporation now maintaining or keeping any such dam or other thing, shall be allowed six months from the time this act shall take effect in which to comply therewith.

And it shall be the especial duty of said forest, game and fish warden upon the information of the violation of this provision, to immediately investigate the same, and cause this provision to be fully carried out.

Sec. 46. It shall be unlawful for any person, firm or corporation to employ or hire, or in any way, directly or indirectly or by the use of money or other thing of value, to induce or per-

suade any other person, firm or corporation, to kill, catch or deliver to such first named or any other person, firm or corporation, any deer, wild turkey, quail, pheasant or ruffed grouse, or any other wild game or wild birds, or trout, bass, salmon or any other game fish, the sale of which game, birds or fish is prohibited by this chapter, and the serving of any such birds, game or fish killed or caught in this state by any hotel, restaurant or other licensed place where meals are furnished for pay, shall be deemed a sale of such birds, game or fish.

And it shall be unlawful for any person, firm or corporation to kill, catch or deliver for money or other thing of value, either directly or indirectly, any such game, birds or fish.

Any person, firm or corporation violating this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten nor more than fifty dollars and may be confined in the county jail at the discretion of the court or justice, for a period not exceeding thirty days, and each animal, bird or fish so served, killed, caught or delivered, shall constitute a separate offense.

Sec. 47. It shall be unlawful for any person to kill or attempt to kill any fish by use of dynamite or any other explosive mixture, or by the use of any poisonous drug, substance, bait or food or by the use of electricity, lime or other thing of like nature. And the placing of any such articles in any stream, pond or lake, shall be deemed and taken to be *prima facie* proof of intention to violate this section.

Any person violating this section shall be guilty of a felony and upon conviction thereof, shall be confined in the penitentiary for a period not less than six months nor more than two years, and may, at the discretion of the court, be fined not less than fifty nor more than two hundred dollars.

Sec. 48. It shall be unlawful for any person, firm or corporation to sell, give or furnish directly or indirectly, any dynamite or any other explosive or killing mixture or any poisonous drug, bait or food to any person, when such person, firm or corporation knows or has reason to believe that such dynamite or other explosive or killing mixture or poisonous drug, bait or food are intended to be used for the purpose of killing fish. Any person, firm or corporation violating this section shall be guilty of a misdemeanor and upon conviction thereof, shall for each offense, be fined not less than twenty-five nor more than one hundred dol-



lars, and may at the discretion of the court be confined in the county jail not exceeding thirty days.

Sec. 49. It shall be unlawful for any person to shoot, hunt, fish or fowl upon the enclosed or unenclosed lands of another person, or camp, peel trees, cut trees or timber, build fires or do any other act or thing thereon in connection with or auxiliary to shooting, hunting, fishing or fowling on such lands, without permission in writing of the owner, lessee or other person entitled to the possession of such lands or of the tenant or agent of such owner, lessee or person entitled to the possession thereof, duly authorized to give such written permission, and every person hunting, shooting, fishing or fowling upon such lands shall have such written permission with them when so doing.

Any person violating any provision of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten dollars nor more than fifty dollars and may in the discretion of the court or justice, be confined in the county jail not more than thirty days; and if any person be convicted a third time of such offense, he shall be confined in the county jail for a period of not less than three nor more than thirty days in addition to any fine imposed, and in all cases he shall be confined in the county jail until the fine and costs are paid; *provided*, that such time shall not exceed thirty days.

It shall be lawful for the owner, lessee or the person entitled to the possession of such lands or the agent thereof, to arrest any such person found violating this section and immediately take him before a justice of the peace for trial, and such owner, lessee, person or agent are hereby vested with all the powers and rights of a deputy game warden for such purpose; and it is hereby made the duty of the warden and all deputies to see that this section is enforced.

Sec. 50. It shall be unlawful for any person to shoot or discharge any firearms in or across any public road in this state at any time or within four hundred feet of any school house or shoot or discharge any firearms on the lands of another on any lawn or orchard or on any pleasure ground or other ground, which is directly appurtenant to or within six hundred feet of an occupied dwelling house. Any person violating this section shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than ten dollars nor more than fifty dollars or at

the discretion of the court or justice, be imprisoned not more than thirty days.

Sec. 51. The forest, game and fish warden shall be *ex officio* fire warden of the state of West Virginia, and all deputy wardens shall also be deputy fire wardens for their respective counties in which each may reside. In case of fire in, or threatening to forest or woodland, the deputy fire wardens of the county wherein such fire is, shall upon receiving notice thereof, forthwith attend and use all necessary means to confine and extinguish the same. He may destroy fences, plough land, or, in an emergency, set back fires to check fire. He may hire volunteers or summon any resident of his county to assist in putting out fires. Any person summoned, who is physically able and refuses to assist, shall forfeit the sum of ten dollars as a penalty therefor. An action of trespass shall not lie against persons crossing or working upon lands of another to extinguish fire. In case a forest fire burn over more than one acre of land, the deputy fire warden of the county in which it occurs shall make report thereof to the warden, giving the area burned over, the quantity of timber, wood, logs, bark or other forest products, and of fences, bridges and buildings destroyed, with an estimate of the value thereof. He also shall report the cause of such fire and the means used and cost expended in putting it out.

Sec. 52. Deputy wardens shall receive the sum of two dollars per day for the time actually employed at forest fires, and each county court may fix the price to be paid per day, not exceeding two dollars for services of laborers at forest fires in their respective counties, and serve notice thereof on the warden and the deputy wardens, resident in such county. All services rendered at forest fires shall be a charge against the county, and each deputy warden shall render within twenty days after such fire to the county court thereof, a sworn statement of the time used by him at such fire with the location of the same and the names of all persons hired or summoned by him, who assisted him thereat, together with the time each worked and the county court shall pay such deputy warden and assistants out of the county funds, after it has examined such reports and is satisfied with the correctness thereof.

Sec. 53. Whoever by himself, or by his servants, agents or guide, or as the servant, agent or guide of any other person, shall build any fire, or use an abandoned fire in a field, public or private road, or adjacent to, or in any woods or forest in this

state, shall, before leaving such fire, totally extinguish the same, and upon failure to do so, such person, or persons, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars and costs of the prosecution, and upon default in paying said fine and costs, shall be confined in the county jail not more than ninety days unless said fine and costs be sooner paid. If any person, or persons, negligently set on fire any woods, fields or lands within this state, so as thereby to occasion loss, damage or injury to any other person, he shall be guilty of a misdemeanor and on conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars, and in the discretion of the justice or court trying the case, be imprisoned in the county jail not to exceed one year, and upon default in payment of the fine and costs, he shall be imprisoned in the county jail not to exceed six months, and if any person or persons wilfully set on fire any woods, fields or lands within this state, not his own so as thereby to occasion damage or injury to any other person, he shall be guilty of a felony and on conviction thereof, shall be confined in the penitentiary not less than one nor more than two years.

Sec. 54. Every railroad company shall, on such part of its road as passes through forest lands or lands subject to fires from any cause, cut and remove from its right of way along such lands, at least twice a year, all grass, brush and other inflammable materials and employ in seasons of drought and before vegetation has revived in the spring, sufficient trackmen to promptly put out fires on its rights of way; provide locomotives thereon with netting of steel or iron wire so constructed as to give the best practicable protection against the escape of fire and sparks from the smoke stacks thereof, and adequate devices to prevent the escape of fire from ash pans and furnaces which shall be used on such locomotives.

No railroad company or employee thereof, shall deposit fire coals or ashes on its track or right of way near such lands. In case of fire on its own or neighboring lands, the railroad company shall use all practicable means to put it out. Engineers, conductors or trainmen discovering or knowing of fires in fences or other material along or near the right of way of the railroad in such lands, shall report the same at the first station to the station agent, and such station agent shall forthwith notify the nearest fire warden and use all necessary means to extinguish the

same, And any officer or employe of a railroad company violating any provisions of this section, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined a sum not less than twenty nor more than two hundred dollars.

Sec. 55. The forest, game and fish warden in the name of the county in which any forest fire has occurred, and which has been extinguished or suppressed by his efforts, shall recover from the person or persons, firm or corporation giving origin to such fire, the amount so expended in extinguishing said fire and the costs thereof, and the same shall not bar the rights of damage between the parties thereto.

Sec. 56. All acts and parts of acts in conflict with this act are hereby repealed.

(House Bill No. 100.)

## CHAPTER 61.

AN ACT to empower the United States of America to acquire lands in the state of West Virginia by condemnation or otherwise for a national forest reserve, and granting to the United States all rights necessary for the proper control and regulation of such reserve.

(Passed February 26, 1909. In effect ninety days from passage. Approved by the Governor February 27, 1909.)

Sec.	1. Consent of state legislature to acquisition by United States of lands for forest reserve; concurrent jurisdiction retained.	}	Sec.	2. Power conferred upon congress to pass laws necessary to acquisition of lands and making of rules and regulations governing same.
				3. }

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That the consent of the legislature of West Virginia be and is hereby given to the acquisition by the United States, by purchase or by condemnation with adequate compensation of such lands in West Virginia as in the opinion of the federal government may be needed for the establishment of such a national forest reserve in that region; *provided*, that the state of West Virginia shall retain a concurrent jurisdiction with the United States in and over such lands so far that civil process in all cases, and

such criminal process as may issue under the authority of the state of West Virginia against any person charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this act had not been passed.

Sec. 2. That power is hereby conferred upon congress to pass such laws as it may deem necessary to the acquisition, as hereinafore provided, for incorporation in said national forest reserve of such forest covered lands in West Virginia as in the opinion of the federal government may be needed for this purpose.

Sec. 3. Power is hereby conferred upon congress to pass such laws and to make or provide for the making of such rules and regulations, of both a civil and criminal nature, and provide punishment therefor, as in its judgment may be necessary for the management, control and protection of such lands as may be from time to time acquired by the United States under the provisions of this act.

(House Bill No. 242.)

## CHAPTER 62.

AN ACT to amend and re-enact sections six, seven, eight, nine ten, eleven, twelve, sixteen, twenty, twenty-six, thirty-five, forty, forty-three, forty-four, forty-five, forty-six, fifty, fifty-two, seventy-nine, ninety-six, and one hundred-a, and to repeal sections thirteen, fourteen, fifteen, seventeen, eighteen, twenty-three and twenty-five, of chapter eighteen of the code of West Virginia, known as the military code, relating to the militia.

(Passed February 26, 1909. In effect April 1, 1909. Approved by the Governor March 1, 1909.)

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6. Organized militia of state; name; liable for active service; period of service; powers of governor to order out active and reserve militia; state designation.
7. Payment for attending drills, parade, inspection, etc.; time of payment; record of members present and absent; penalty for damage or loss of equipment, etc.
8. Staff of commander-in-chief; how constituted; honorary staff; adjutant general; his powers;

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- salary; to report to commander-in-chief; power to employ assistants; to maintain bureau of records.
9. Department of the West Virginia national guard; how divided; battalions and companies to remain as established; power of governor to re-organize; rank of officers of departments; increase in time of war.
10. Military units; how composed.
11. Battalion of Infantry; how composed.

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| <p>Sec.<br/>12. Regiment of infantry; how composed; hospital corps; brigade to consist of; additional staff officers.</p> <p>16. Medical corps; how composed; promotions and how determined; ineligible.</p> <p>20. Vacancy in office of brigade commander; how filled.</p> <p>26. First class sergeants and sergeants of hospital corps; appointment of non-commissioned officers.</p> <p>35. Commissioned officers rendered surplus by reduction; provision for honorable discharge of supernumeraries; supernumary officers may be ordered to active duty.</p> <p>40. Uniforms, arms, equipment and military supplies; how paid for.</p> <p>43. Who eligible to wear uniforms or other insignia; unlawful usages of same; penalty.</p> <p>44. Actual service of officers and soldiers; pay for such service; pay for duty at camp; salaries of officers serving on military courts; allowances to inspec-</p> | <p>tion officers; pay for rifle practice; claims for service rendered; competitive bids required for certain work; railroad transportation for officers and enlisted men, stores, ammunition, etc.</p> <p>45. Salary for adjutant general appointed by brigade commander; allowance for regimental headquarters.</p> <p>46. Military fund; expenditure of fund.</p> <p>50. Annual camp and maneuver duty; time and place; fixing bounds and limits of camp; disorder at encampment; penalty.</p> <p>52. Unlawful organization of military companies; penalty therefor.</p> <p>79. Absence from drill or other duty; penalty.</p> <p>96. Suits in court against military officers.</p> <p>100a. Arsenal, army and other militia quarters owned by state under control of governor; repair of same; erection of buildings; payment therefor; ground secured by purchase or condemnation; conflicting acts and parts of acts repealed.</p> |
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*Be it enacted by the Legislature of West Virginia:*

That sections six, seven, eight, nine, ten, eleven, twelve, sixteen, twenty, twenty-six, thirty-five, forty, forty-three, forty-four, forty-five, forty-six, fifty, fifty-two, seventy-nine, ninety-six and one hundred-a, of chapter eighteen of the code of West Virginia, known as the military code, be amended and re-enacted so as to read as follows; and that sections thirteen, fourteen, fifteen, seventeen, eighteen, twenty-three and twenty-five of said chapter eighteen be repealed.

Sec. 6. The organized militia of the state shall constitute and be known as the West Virginia national guard and shall be liable at all times to be ordered into active service and all or any part thereof, may be turned over by the commander-in-chief into the service of the United States, on requisition by the president for service without the state; *provided*, that no officer nor enlisted man shall be held to such service for a period longer than that of the remaining time to be served by such officer or enlisted man, under the term of his commission or enlistment. When the militia of this state, or any part thereof, is called for under the constitution and laws of the United States, the governor shall order out for service the active militia or such part thereof as may be necessary and if the number available be insufficient, he shall order out such part of the reserve militia as he

may deem necessary. During the absence of organization of the national guard in the service of the United States, their state designation shall not be given to new organizations and all organizations and officers on return from such service, shall be given their former standing and rank.

Sec. 7. For the purpose of providing, maintaining and encouraging a more efficient national guard, each commissioned officer and regularly enlisted man in the organized militia of this state shall be paid under such regulations as the governor may prescribe, not less than twenty per cent of the pay provided herein for camp duty, for attendance at drills, parades, or inspections, not including duties performed at encampments, practice marches, or maneuvers; such payment to be made for not less than twenty-four nor more than forty-eight drills, parades, or inspections in one year, payment for which shall be made quarterly upon the presentation of the proper certified muster and pay roll to the adjutant general, who shall make payment in such manner as other payments are made, to the commanding officer of each organization entitled to pay, who shall distribute the same to the persons entitled thereto. The commanding officer of each company or band shall, at a stated hour during the drill, or parade or inspection, call the roll of his command and keep a record of the members present and the absentees and from this record shall make muster and pay rolls at the end of each quarter in such number as may be ordered by the adjutant general, to which he shall attach his certificate and forward to the adjutant general. *Provided, however,* that this provision may be suspended by the governor for any part of any fiscal year. Any enlisted man in the organized militia of the state who wilfully, maliciously, purposely or through carelessness or neglect, permits any of the utensils, clothing or other equipment issued to him, being public property, or belonging to the state, to become lost, damaged, or in any other manner unfit for its intended use, shall have so much of his pay retained as may be required for the replacing, repairing or cleaning of the same, or as may be necessary to place such property in condition for military service. The adjutant general shall make such regulation and require such bonds and reports and furnish such blanks, as may be necessary to carry out the provisions of this section. All charges against enlisted men for the loss of quartermaster property or ordnance or ordnance stores, will be entered on the payment in red ink in a special column ruled for that purpose

and "Statement of Charges" will be mailed with the quarterly return of the property and stores for the use of the quartermaster general, for use in checking the property accounts. Drafts for the amount due the state made payable to the adjutant general, will accompany each statement of charges; quartermaster and ordnance property being kept separated.

Sec. 8. The staff of the commander-in-chief shall consist of one adjutant general with rank of brigadier general; and in addition thereto six aides with rank not above that of colonel may be detailed from the line. Such details to be made at the pleasure of the commander-in-chief. The commander-in-chief may also appoint and commission an honorary staff to serve during his term of office of such number as he may deem advisable, with such rank as he may fix; which honorary staff will not be held to be a part of the regularly organized militia. The adjutant general shall be appointed and commissioned by the governor, but no person shall be appointed adjutant general unless such person has had at least one year's service in the national guard of this or some other state, or the army of the United States, or all combined. In time of peace he shall perform the duties of chief of the pay, quartermaster and ordnance departments unless otherwise ordered by the governor, and shall give bond in such sum as the commander-in-chief may require, such bond to be provided in like manner as the bonds of other officers. He shall receive a compensation of thirty-six hundred dollars per annum, which shall be paid to him in equal monthly installments, and his term of office shall be for four years. He shall attest, record and seal with the seal of the state, all commissions issued by the governor and keep a register of all commissioned officers with dates of commission and all changes occurring in the commissioned force and shall keep a full and complete record at all times of the organized militia of the state. He shall as soon as possible after the first day of October in each year, make a report to the commander-in-chief of the transactions and the expenditures of his department and the condition of the national guard. Said report shall show all receipts into the military or militia fund of the state from every source, including fines, appropriations from the state and of all moneys received from the federal government and from every other source; all such funds and moneys shall be paid into the state treasury as soon as received, and shall be credited to the military fund. Said statement shall also show in detail all expenditures made



from each fund and the purpose of expenditure; and shall state such other details as the governor may order and said report shall be communicated by the governor to the next session of the legislature. He shall also make such other reports and returns as may be required by the commander-in-chief from time to time. He shall cause to be prepared and issued to the different organizations of the national guard all necessary books and blanks for reports, records, returns and general administration, and shall, at the expense of the state, cause the military laws, military code and rules and regulations in force, to be printed, bound in proper form, and distributed: one copy to each commissioned officer and one each to all the circuit, intermediate and criminal court judges, sheriffs, assessors and justices of the peace in the state requiring them, and shall procure and supply all necessary text books of drill and instruction. He shall keep in his office an accurate account of all state or United States property issued to the state. He shall keep on file in his office all official bonds, except the bond of the adjutant general, which shall be filed with the auditor of the state; the reports and returns of troops and heads of military departments and all other writings and papers which are required to be transmitted to and preserved at the general headquarters of the state militia. He shall employ such clerical force and assistants as may be required in the military department; *provided*, that not to exceed the sum of five thousand dollars shall be expended for this purpose in any one year, which sum shall include the salary of the person in charge of the store-room; he shall keep all records of volunteers from the state of West Virginia, commissioned or enlisted in any of the wars of the United States and of individual claims of citizens of West Virginia for service rendered in such wars. He shall assist all persons residing in the state of West Virginia having claims against the United States for pension, bounty or back pay or such claims as have arisen out of, or by reason of service in any of said wars. To this end he shall co-operate with the agents or attorneys of said claimants, furnish to claimants only, all necessary certificates or certified abstracts from or copies of records or documents in his office, and shall in all practicable ways seek to secure speedy and just action in all claims now pending or which may hereafter be filed; *provided*, that any and all the above services shall be rendered without charge to the claimant. He shall establish and maintain as a part of his office a bureau of records of the services

of the West Virginia troops during the said wars and shall keep arranged in proper and convenient form all records and papers pertaining thereto. The provisions of this section shall not be held to effect the commission of any officer serving on the governor's staff at the date of the passage of this act, nor until the expiration of the term for which such officer was appointed; nor shall any such officer be deprived of any compensation allowed to him by law at the time of the passage of this act, nor until the expiration of the term for which such officer was appointed.

Sec. 9. The West Virginia national guard shall consist of an adjutant general's department, an inspector general's department, a quartermaster's department, a subsistence department, a pay department, a medical corps, a corps of engineers, a signal corps, a hospital corps, and a brigade of infantry, and the regiments, battalions and companies shall remain as now established, but the governor shall have power to alter, divide, annex, consolidate, disband or reorganize the same and create new organizations whenever, in his judgment, the efficiency of the state forces will be thereby increased, except in so far as such action would be contrary to the provisions of the regulations of the war department governing the organized militia; and he shall at any time have power to change the organization of departments, brigades, regiments, battalions and companies so as to conform to any organization, system of drill, or instruction now or hereafter adopted for the army of the United States, and for that purpose the number of officers of the brigade, regiments, battalions and companies may be increased or diminished and their rank increased or reduced to the extent made necessary by such change. The officers of the foregoing departments shall be of like rank as officers of similar departments of the army of the United States and shall perform like duties; the number of such officers to be determined by the commander-in-chief, but this number shall be limited to the actual requirements of the different departments, and the commander-in-chief may designate one officer as chief of a number of different departments, unless such action would be contrary to the regulations provided by the war department for the government of the organized militia. The governor shall have the power in case of war, insurrection, invasion, or imminent danger thereof, to increase the force beyond the minimum now established by law and organize the same with proper officers as the exigencies of the service may require. In the event of the

formation of any such new organizations, officers holding commissions in the national guard as organized at such time, shall be eligible for commission in said new organizations with like or higher grade and rank, if found capable after examination by a regularly authorized board and shall be given preference over any one not already holding commissions.

Sec. 10. The military units of the national guard shall be composed as follows:

A company of infantry shall consist of:

- 1 Captain,
- 1 First Lieutenant,
- 1 Second Lieutenant,
- 1 First Sergeant,
- 1 Quartermaster Sergeant,
- 4 Sergeants,
- 6 Corporals,
- 2 Cooks,
- 2 Musicians,
- 1 Artificer,
- 41 Privates.

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58 Enlisted, minimum.

Sec. 11. A battalion of infantry shall consist of:

- 1 Major,
- 1 Adjutant, First Lieutenant,
- 1 Quartermaster and Commissary, Second Lieutenant,
- 1 Sergeant Major,
- 4 Companies.

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233 Total Enlisted, minimum.

Sec. 12. A regiment of infantry shall consist of,

- 1 Colonel,
- 1 Lieutenant Colonel,
- 1 Adjutant, Captain,
- 1 Quartermaster, Captain,
- 1 Commissary, Captain.
- 1 Inspector of Small Arms Practice, Captain,
- 1 Chaplain, Captain,
- 1 Sergeant Major,
- 1 Quartermaster Sergeant.
- 1 Commissary Sergeant.

2 Color Sergeants,	}	Band.
1 Chief Musician,		
1 Principal Musician,		
1 Drum Major,		
4 Sergeants,		
8 Corporals,		
1 Cook,		
12 Privates.		

733 Enlisted, minimum.

The hospital corps shall have such strength as shall be prescribed by order of the commander-in-chief, and shall be organized into a field hospital or ambulance company as he may elect, or the members thereof may, on recommendation of the chief of the medical department, be assigned to duty with the different regiments and battalions. A brigade will ordinarily consist of two or more regiments of infantry, three being the normal organization, but separate battalions and separate companies may be assigned thereto. A brigadier general is the proper commander for a brigade, who shall be provided with the following staff to be detailed from the several staff corps as follows:

- 1 Adjutant general, major, adjutant general's department,
- 1 Quartermaster, major, quartermaster department,
- 1 Inspector of small arms practice, major, ordnance department,
- 1 Commissary, major, subsistence department,
- 1 Surgeon, major, medical department,
- 2 Aides, lieutenants, from the line.

In addition to the staff officers enumerated in the foregoing list, such other staff officers as may be necessary may be designated for duty on the staff of the brigade by the commander-in-chief, but officers so designated must belong to some staff corps or department or to the line and be detailed for duty on the brigade staff. The commander-in-chief is authorized to make such changes in the brigade staff prior to January first, one thousand nine hundred and ten, as will comply with the above.

Sec. 16. The medical corps shall consist of one officer with rank of lieutenant colonel, who shall be chief of the corps and perform the duties of the surgeon general; two with rank of major, three with rank of captain and three with rank of lieutenant, who shall be commissioned to the medical corps on recommendation of the chief of the corps if approved by the commander-in-chief,

and-promotions in the medical corps shall be determined by such rules and regulations as are provided by the war department for the medical corps of the United States army. No person shall be appointed to the medical corps who is not a regularly qualified practitioner and who has not been in active practice for at least three years next preceding date of appointment.

Sec. 20. A vacancy in the office of the brigade commander may be filled by the commander-in-chief by appointment, or he may issue an order for an election to fill the vacancy; such appointment or election to be confirmed by the senate. In case an election is ordered, the field officers of each regiment and the commanding officers of companies shall be the electors, but no person shall be eligible to appointment or election to this office who has not served in some recognized military establishment for at least five years, a half of which period must have been in the West Virginia national guard, next preceding the date of such appointment or election.

Sec. 26. The first class sergeants and sergeants of the hospital corps shall be appointed and warranted by the chief of the medical corps. To be eligible for appointment as sergeants, first class in the hospital corps, a candidate must be a registered pharmacist or a licensed physician. A sergeant of the hospital corps must be appointed from the hospital corps. All non-commissioned officers of regiments, battalions and companies shall be appointed by the commanding officer thereof and warranted by the regimental commander, if approved by him. Non-commissioned officers required for service in the different departments will be appointed and warranted by the chief of department in which they are to serve.

Sec. 35. Commissioned officers who shall be rendered surplus by reduction, consolidation, or disbandment of organizations or in any manner provided by law now or hereafter, shall be withdrawn from active service and placed upon the supernumerary list; *provided*, such officer shall have had four years continuous service in the national guard of this state immediately preceding his being placed on the supernumerary list, and, *provided, further*, that the governor is authorized to honorably discharge such officer having less than four years service at the time they are rendered supernumerary, in any manner provided by law, and such officers now on the supernumerary list as have not had four years service immediately preceding their being placed on such list, shall in

like manner be discharged, unless such officer was rendered supernumerary by reason of being commissioned or enlisted in the volunteers from this state and mustered into the service of the United States for the war with Spain. Officers placed on the supernumerary list shall be removed from the line of promotion while on such list, except that officers who may be detailed or promoted from the line to staff duty or to duty in any of the departments who may be relieved of such staff duty or department duty shall be placed on the supernumerary list with rank held at the time of such detail or transfer and promotion and shall retain the right to promotion the same as if they had remained in the line. The governor, upon request of organization commanders, may order supernumerary officers to active duty, in which case they shall rank in their grade from the date of such orders and he may relieve them from such duty and return them to the supernumerary list at his discretion. Officers who have tendered their resignations may be placed on the supernumerary list pending settlement of their property accounts, under such regulations as may be prescribed by the commander-in-chief.

Sec. 40. The uniforms, arms, and equipments and military supplies necessary for the proper performance of the duty required by this chapter, shall be similar to those prescribed for the army of the United States. Commissioned officers shall provide themselves with the uniforms, arms and equipments lawfully prescribed and approved and there shall annually be allowed to aid them in procuring and maintaining same in condition for service, the sum of twenty-five dollars for foot officers and thirty dollars for mounted officers. All uniforms, arms, equipments and other property shall be issued to organizations of the national guard and accounted for under such regulations as the commander-in-chief may prescribe.

Sec. 43. Any person who shall wear any uniform of any device, strap, knot or insignia of any design or character, used as a designation of grade, rank or office, such as by law or regulations duly promulgated, prescribed for use of the organized militia or similar thereto, except members of the army and navy of the United States or the national guard of this or any other state, members of associations wholly composed of soldiers honorably discharged from the service of the United States, or the members of the order of sons of veterans, shall be guilty of a misdemeanor and on conviction thereof, shall be fined not less than ten dollars

nor more than one hundred dollars, and any member of the national guard who shall, when not on duty, wear any such uniform or equipment issued by the state without permission of his commanding officer, shall be subject to a fine of not more than fifty dollars. Any circuit, intermediate, criminal court or justice of the peace shall have jurisdiction over offenses enumerated in this and the preceding sections.

Sec. 44. Officers and soldiers when called into actual service of the state to enforce the laws, suppress riots, or insurrections, repel invasions, or to disperse unlawful assemblages, after sixty days of such service, shall receive the same pay and allowances as prescribed for officers and soldiers of the United States army. From a period of sixty days or less, officers shall receive the same per diem and allowances as prescribed for officers of like rank and grade in the United States army and soldiers shall receive pay per diem as follows: Musicians and privates, one dollar and twenty-five cents; corporals, one dollar and fifty cents; sergeants, one dollar and seventy-five cents; post non-commissioned officers, first sergeants, regimental and company quartermaster sergeants, regimental and battalion sergeants major, regimental commissary sergeants, color sergeants, drum majors, sergeants first class hospital corps, and principal musicians, two dollars. Chief musicians, when regularly warranted as such, shall receive the same pay as a second lieutenant in addition to their rations. The clothing allowance to enlisted men shall be such as may be fixed in orders from time to time by the commander-in-chief. For duty at encampments the pay of officers and soldiers shall be the same as above provided for service of sixty days or less. All officers serving on military courts or boards except as herein otherwise provided, shall receive the same pay as officers of like rank and grade in the United States army together with the cost of their transportation, and the commander-in-chief may, in his discretion, make a suitable allowance to inspecting officers to cover their expenses. To promote, encourage and maintain interest in rifle practice, each enlisted man qualifying in the grade of sharpshooter or better, shall be entitled to an increase of ten per cent over the pay herein provided, such qualification to be made in accordance with the United States army regulations covering small arms practice, as applied to the organized militia. All payments required by the provisions of this chapter except for active service, shall be paid out of the military fund and all expenses incurred in active ser-

vice shall be paid out of any moneys in the treasury not otherwise appropriated. The militia fund shall be disbursed on warrant of the adjutant general, properly drawn and in such manner as the governor may order, but no warrant for funds signed by him shall be honored by the auditor until such adjutant general shall have executed and filed such bond as may be required by the commander-in-chief. Payments shall be made on proper vouchers, which vouchers shall show the authority under which the expenditure is made, shall contain an itemized statement of the transaction and be filed for record in the office of the adjutant general.

All claims for services rendered or material furnished shall be approved by the officer ordering the work or material and shall be over his certificate to the effect that the amount is just and reasonable and that it had not been previously paid. No expenditure shall be made by any officer until an estimate of the amount and a statement of the necessity therefor shall have been laid before the adjutant general and his approval received.

Where practicable, competitive bids shall be received for all work or material involving an expenditure of more than two hundred dollars and the contract will be let to the lowest responsible bidder, who, if required by the commander-in-chief, shall enter into a good and sufficient bond for the proper performance of his contract. The several railroads and other transportation companies in this state shall furnish transportation for all officers and enlisted men in the national guard, together with the stores, ammunition, and equipments when traveling on duty under orders from competent authority, upon request of the officer desiring transportation, which request will state the number of persons to be carried and their destination, and for such transportation, said companies shall be entitled to receive compensation from the state at the rate specified.

Sec. 45. The adjutant general appointed by the brigade commander shall, in lieu of all other pay except for active service and camp duty, be allowed an annual salary of seven hundred and fifty dollars, and there shall be allowed to each regimental headquarters for clerical services, one hundred and twenty-five dollars per quarter, and to each battalion headquarters, twenty-five dollars per quarter, and to each company and chief of the medical department, not less than thirty nor more than seventy-



five dollars per quarter and to the chief musician of each band, thirty dollars per quarter.

Sec. 46. The sums of money which may be appropriated by the legislature for carrying into effect the provisions of this act and all sums of money received from the federal government for the purpose, together with the fines and penalties required thereby to be paid to the treasurer of the state and any amounts that may be received from the United States, on account of claims or expenses incurred by the state during the civil war and the war with Spain, shall constitute the military fund of the state for the uses and purposes set forth in this chapter; *provided*, that any sums so received from the United States shall be expended only for the construction of armories or for the acquisition and construction of rifle ranges. The state treasurer shall, at the end of each quarter, render to the adjutant general a statement of the condition of the military fund, showing the amount on hand at the beginning of the quarter, the amount received and expended during the quarter, and balance on hand at the end of the quarter. Adjutant general shall furnish the commander-in-chief and brigade commander a copy of this quarterly report and if the sum appropriated by the legislature for any year shall not be sufficient to pay for duty at the annual encampment for the number of days provided in this chapter, then either such encampment shall not be held for that year, or held without pay, or held for less number of days than provided in this chapter, as the commander-in-chief may determine, so that no deficiency shall be created by reason of holding of such encampment.

Sec. 50. The commander-in-chief, except as provided in section forty-six, shall cause the national guard to perform at least five consecutive days of camp or maneuver duty in each calendar year, exclusive of the time consumed by troops in going to and returning from camp, either by brigade, regiment, or battalion, and designate the time and place therefor.

The commanding officer of an encampment may fix certain bounds within the limits of the camp ground, not including any public road, within which no spectator shall enter without leave, and whoever does enter within such boundary, either with or without permission, may be expelled therefrom by the commanding officer, or by his order, and whoever intrudes within such limits when forbidden to do so, or after entering by permission, conducts himself in a disorderly manner, or whoever resists

a sentry or guard acting under orders to prevent such entry, or to prevent disorderly conduct, or to expel any person or persons ordered to leave such boundary, may be arrested by the commanding officer, or by his order, and taken before a justice of the peace of the county in which such camp is located, and upon conviction, shall be fined not more than one hundred dollars nor less than ten dollars, and the costs of prosecution, and committed to the jail of the county until such fine and costs are paid. Or, if any person shall temporarily erect any stand, booth, or other structure, for the purpose of unlawfully exposing for sale, giving, bartering, or otherwise disposing of any spirituous or intoxicating liquors whatsoever, without license therefor, at or within a distance of one mile from any such encampment, he may be put immediately under guard by the commanding officer, or by his order, and such commanding officer shall at once turn over such person to any police officer of the city or town, sheriff or constable of the county, wherein such encampment is held, for examination or trial before any court having competent jurisdiction, and it shall be the duty of the prosecuting attorney of the county in which such encampment is held, to appear, upon the request of the commanding officer of the camp, and prosecute without compensation other than is provided by law.

Sec. 52. It shall not be lawful for any body of men whatever, other than the regularly organized national guard or militia or the troops of the United States, to associate themselves together as a military company or organization in the state of West Virginia; *provided*, that the governor may grant permission to public or private schools of the state to organize themselves into companies of cadets and may furnish such cadets under proper restrictions, such obsolete ordnance stores and equipments owned by the state, as are not in use by the organized militia. Whosoever offends against the provisions of this section or belongs to or parades with any such unauthorized body of men with arms, shall be punished with a fine of not exceeding one hundred dollars or be imprisoned for a term not exceeding six months.

Sec. 79. Enlisted men who shall, without proper excuse, be absent from or in any other respect be delinquent at any drill, parade, encampment, meeting for instruction, or other duty ordered by competent authority, may be fined by a summary court not more than five dollars nor less than fifty cents for each day or part thereof of his absence or delinquency.

Sec. 96. When a suit or proceeding shall be commenced in any court by any person, against any military officer of the state, for any act done by such officer in his official capacity in the discharge of any duty under this chapter, or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, the court shall, upon motion of the defendant, when it has been made to appear to the court by affidavit or otherwise, that the act done is such as hereinabove set forth, require the person prosecuting or instituting the suit or proceeding, to file security for the payment of costs that may be incurred by the defendant therein. This security shall be by bond payable to the state, with surety to be approved by the clerk of the court, in a penalty equal to six times the costs incurred and likely to be incurred by the defendant, but in no case shall said bond be for a penalty less than five hundred dollars.

The court before whose clerk such bond is given, may, on motion by a defendant, give judgment for so much as he is entitled to by virtue of said bond under the provisions of this section.

If such security for costs be not given within sixty days from the time the same is required by the court to be given, the suit or proceedings shall, by order of the court, be dismissed.

In case the plaintiff in any suit or proceeding shall be non-suited, or shall have a verdict or judgment rendered against him, or in case any such suit or proceeding shall be dismissed for failure to give security for cost, then the defendant shall recover three times the amount of the costs incurred by him.

In all such cases as are referred to in this section, the defendant may make a general denial and give the special matter in evidence.

Sec. 100-a. Whenever any arsenal, armory or other quarters of the militia, camp ground or rifle range is owned by the state, the same shall be under control of the governor and be subject to such regulations as he may prescribe.

He shall cause to be kept in good repair all armories, arsenals, rifle ranges, and camp grounds owned by the state, and all moneys which may be appropriated for the erection, acquisition or repair of such buildings, grounds or ranges, shall be expended and accounted for under regulations to be prescribed by him. He is authorized to employ and discharge such architects and inspectors as may be needed to successfully carry on any such work.

During and upon completion of any such work it shall be inspected from time to time and no payments shall be made until it appears by the certificate of such inspector that such work has been properly performed and according to the contract, if one has been made.

Copies of all contracts and agreements made for the repair or alteration of arsenals, armories, quarters, camp grounds or rifle ranges of the state shall immediately be filed in the office of the adjutant general.

The governor may procure by purchase or condemnation sufficient ground for armories, arsenals, quarters, camp grounds and rifle ranges, when funds are available for the purpose, title for same to be in the name of the state, and he may on the state being reimbursed for its expenditures, transfer title to such camp grounds and rifle ranges to the United States; the government of the United States being hereby authorized to hold, not to exceed in all, six hundred acres of land in the state for this purpose.

When real property may be required for military purposes as above set forth and no agreement can be reached with the owners for the purchase thereof, title thereto shall be acquired by condemnation in the name of the state, by the attorney general on the written application of the governor. The cost of all real property so taken and damages and expenses incurred by and awarded in any such proceedings for the condemnation of any such property, except counsel fees of the defendant, shall be paid by the state.

All acts or parts of acts in conflict with the foregoing sections as herein amended, are hereby repealed.

(House Bill No. 78.)

## CHAPTER 63.

AN ACT to amend and re-enact sections one, two and six of chapter thirty-three of the code, relating to taxes on inheritances, devises, distributive shares and legacies.

(Passed February 23, 1909. In effect ninety days from passage. Approved by the Governor March 1, 1909.)

- Sec.  
 1. Tax on transfer of properties in trust or otherwise; the properties defined.  
 2. Rate of tax on properties not exceeding \$25,000.00 in value.  
 2-a. Rate of tax on property exceed-

- Sec.  
 ing \$25,000.00 in value.  
 2-b. Exemptions.  
 6. Property not taxable under certain conditions; property of deceased non-resident persons subject to tax.

*Be it enacted by the Legislature of West Virginia:*

That section one, two and six of chapter thirty-three of the code be, and the same are hereby amended and re-enacted so as to read as follows:

Sec. 1. A tax, payable into the treasury of the state, shall be imposed upon the transfer, in trust or otherwise, of any property, or interest therein, real personal or mixed, if such transfer be,

(a) By will or by the laws of this state regulating descents and distributions, from any person who is a resident of the state at the time of his death and who shall die seized or possessed of the property.

(b) By will or by laws regulating descents and distributions, of property within the state, or within its jurisdiction, and the decedent was a non-resident of the state at the time of his death.

(c) By a resident, or be of property within the state, or within its jurisdiction, by a non-resident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor, bargainor or donor, or intended to take effect in possession or enjoyment at or after such death.

(d) If any person shall transfer any property which he owns or shall cause any property, to which he is absolutely entitled, to be transferred to, or vested in, himself and any other person jointly, so that the title therein, or in some part thereof, vest no survivorship in such other person, a transfer shall be deemed to occur and to be taxable under the provisions of this act upon the vesting of such title.

(e) Whenever a person shall exercise by will a power of appointment derived from any disposition of property, such appointment, when made, shall be deemed a transfer taxable under the provision hereof.

Sec. 2. When the property or any beneficial interest therein passes by any such transfer where the amount of the property shall exceed in value the exemption hereinafter specified, and shall

not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be:

(a) Where the person or persons entitled to any beneficial interest in such property shall be the wife, husband, child, lineal descendant or lineal ancestor of the decedent, at the rate of one per centum of the market value of such interest in such property.

(b) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the decedent (and term brother or sister shall not include a brother or sister of the half blood), at the rate of three per centum of the market value of such interest in such property.

(c) Where the person or persons entitled to any beneficial interest in such property shall be further removed in relationship from the decedent than wife, husband, child, lineal descendant, lineal ancestor, brother or sister, at the rate of five per centum of the market value of such interest in such property.

Sec. 2-a. The foregoing rates in section two are for convenience termed the primary rate. When the amount of the market value of such property or interest exceeds twenty-five thousand dollars, the rate of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars up to fifty thousand dollars one and one-half times the primary rates.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, two times the primary rates.

(c) Upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars, two and one-half times the primary rates.

(d) Upon all in excess of five hundred thousand dollars, three times the primary rates.

Sec. 2-b. The following exemptions from the tax are hereby allowed:

(a) All property transferred to a person or corporation in trust or use solely for education, literary, scientific, religious or charitable purposes, or to the state or any county or municipal corporation thereof for public purposes; *provided* the property so transferred is used for the purposes herein mentioned in this state, shall be exempt.

(b) Property of the market value of fifteen thousand dollars transferred to the widow of the decedent, and, ten thousand dollars

transferred to each of the other persons described in sub-division (a) of section two shall be exempt.

Sec. 6. A transfer of personal property of a resident of the state which is not therein or within the jurisdiction thereof, at the time of his death, shall not be taxable, under the provisions of this act if such transfer or the property be legally subject in another state or country to a tax of a like character and amount to that hereby imposed, and if such tax be actually paid or guaranteed or secured, in accordance with law in such other state or country; if legally subject in another state or country to a tax of like character, but of less amount than that hereby imposed, and such tax be actually paid, or guaranteed or secured, as aforesaid, the transfer of such property shall be taxable under this act to the extent of the difference between the tax thus actually paid, guaranteed or secured, and the amount for which such transfer would otherwise be liable hereunder, or within the jurisdiction thereof.

The provisions of this act shall apply to the following property belonging to deceased persons, non-residents of this state, which shall pass by will or inheritance under the law of any other state or country, and such property shall be subject to the tax prescribed in this section:

All real estate and tangible personal property, including money on deposit within this state; all intangible personal property, including bonds, securities, shares of stock and choses in action, the evidence of ownership to which shall be actually within this state; shares of the capital stock or bonds of all corporations organized and existing under the laws of this state, the certificate of which stocks or bonds shall be within this state, where the laws of the state or country where such decedent resides, shall, at the time of his death impose a succession, inheritance, transfer, or similar tax upon the shares of the capital stock or bond of all corporations organized or existing under the laws of such state or country, held under such conditions at their decease by residents of this state.

(Substitute House Bill No. 149.)

## CHAPTER 64.

AN ACT to amend and re-enact section fourteen-*a* of chapter thirty of the code, being section eight hundred and thirty-six of the code of West Virginia, one thousand nine hundred and six. (Passed February 24, 1909. In effect ninety days from passage. Approved by the Governor February 27, 1909.)

Sec.  
14-a-1. Extension of time for distraint and sale for taxes.

*Be it enacted by the Legislature of West Virginia:*

That section fourteen-*a* of chapter thirty, of the code of West Virginia, serial section eight hundred and thirty-six, of the code of West Virginia one thousand nine hundred and six be amended and re-enacted so as to read as follows:

14-a. 1. The sheriffs of the several counties in the state of West Virginia whose term of office expired on the thirty-first day of December, one thousand nine hundred and those whose term of office expired on the thirty-first day of December, one thousand nine hundred and four, shall be allowed until the thirty-first day of December, one thousand nine hundred and twelve within which to make distraint and sale for the collection of taxes, with interest thereon and costs of collection, not returned delinquent for the years one thousand eight hundred and ninety-seven, one thousand eight hundred and ninety-eight, one thousand eight hundred and ninety-nine, one thousand nine hundred, one thousand nine hundred and one, one thousand nine hundred and two, one thousand nine hundred and three and one thousand nine hundred and four; and the said sheriffs and thier deputies and constables of their respective counties are empowered to collect the said taxes, either by suit or by making distraint and sale of the property of the persons against whom such assessments for taxes were made for the years one thousand eight hundred and ninety-seven, one thousand eight hundred and ninety-eight, one thousand eight hundred and ninety-nine, one thousand nine hundred, one thousand nine hundred and one, one thousand nine hundred and two, one thousand nine hundred and three, and one thousand nine hundred and four, and which taxes have not been turned delinquent for those



years; and in case any such person against whom such assessments were made for those years has removed or shall remove to another county, the said sheriff and his deputies are authorized to make distraint and sale in such county to which any such person has removed or shall remove, such sheriff may send a statement of the taxes due from any such person who has removed into another county to the sheriff of the county to which he or she has removed, and the sheriff of that county is authorized and empowered to make levy and collections of the said taxes, in the same manner as he is authorized to collect taxes on assessments made in his own county.

(House Bill No. 108.)

## CHAPTER 65.

AN ACT fixing the fiscal year of counties, districts, school districts and municipalities.

(Passed February 23, 1909. In effect ninety days from passage. Approved by the Governor February 27, 1909.)

Sec

1. Fiscal year, counties, districts, school districts and municipalities; to begin when; to end when; reports, etc., to con-

Sec.

form thereto.  
2. Inconsistent acts and parts of acts repealed.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. The fiscal year for all counties, districts, school districts and municipalities in this state shall commence on the first day of July and end on the thirtieth day of June, and all reports, settlements, accounts and statements of such bodies which are now, or that hereafter may be required by law, shall be kept and made to conform thereto.

Sec. 2. All acts and parts of acts inconsistent with this act are hereby repealed.

(House Bill No. 144.)

## CHAPTER 66.

AN ACT to amend and re-enact section two, of chapter nine, of the acts of one thousand nine hundred and eight, relating to rate and manner of laying levies, etc.

(Passed February 26, 1909. In effect ninety days from passage. Approved by the Governor March 2, 1909.)

Sec.

2. Duty of county court to ascertain and make statement of financial condition of county; what statement shall show in detail; publication of statement in newspapers; duty of court to hear objections to estimate and proposed levy; record of objections; failure of taxpayer to

Sec.

offer objection; procedure after hearing objection; laying of levy to produce amount shown by statement; limit to aggregate of levies; provision when levy is insufficient; special bridge levy; for what purpose; when bridge levy cannot be laid.

*Be it enacted by the Legislature of West Virginia:*

That section two, of chapter nine, of the acts of the special session of one thousand nine hundred and eight, of the legislature, be amended and re-enacted so as to read as follows:

Sec. 2. At such sessions the county court shall ascertain the condition of the fiscal affairs of the county, and make up an itemized statement thereof, which shall set forth in detail:

(a) The amount due, and the amount that will become due and collectable, from every source, except from the levy of taxes to be made for the year, during the current fiscal year, to the county as a whole and to the road fund and any other fund of any district of the county;

(b) The debts and demands owed by the county as a whole, and the debts and demands payable out of the road or other fund of any district thereof, including debts and demands that will become due and payable during the year by the county as a whole or out of the funds of any district thereof, including interest on any indebtedness, funded or bonded or otherwise;

(c) All other expenditures, under the several heads of expenditures to be made and payable out of the levy of the current fiscal year, whether by the county as a whole or out of the road fund or other fund of any district thereof, including cost of collection of taxes and other claims, and proper allowance for delinquent taxes and contingencies.

The said statement shall also set forth the total amount necessary to be raised by the levy of taxes for the current year, the assessed value of the property of the county, personal, real estate and the property assessed by the board of public works, the rate of such levy proposed on the property of the county as a whole, and on the property in each district for district funds, and on the property in each municipal corporation. A copy of such statement duly certified by the clerk of the court, shall be published twice (at least one week intervening between the publications) in two newspapers of general circulation published in the county, and of opposite politics. If there be but one newspaper published in the county, the publication shall be made therein. The session shall then stand adjourned until the fourth Tuesday in August, at which time it shall convene; and it shall then be the duty of said court to hear and consider any objections made orally or in writing, by the prosecuting attorney, by the state tax commissioner or his representative, or by any taxpayer of the county, to said estimate and proposed levy, or any item thereof. It shall be the duty of the court to enter an order of record showing the objections so made, setting forth the reasons and grounds for such objections. But the failure of any officer or taxpayer to offer objection as herein provided, shall not preclude him from pursuing any legal remedy necessary to correct any levy laid by any tribunal named in this act. After said objections have been made and heard, the court shall thereupon reconsider the proposed original estimate and proposed rate of levy; and if the objections thereto or any part thereof appear to be well taken, the court shall correct the same accordingly, and it shall thereupon be approved, and when approved, shall, with the order approving it, be entered by the clerk in the proper record book. The county court shall thereupon levy so many cents on every one hundred dollars of valuation of the taxable property in the county, according to the last assessment thereof, as will produce the amount shown by the statement approved necessary to be raised for county purposes during the fiscal year, and it shall levy so many cents on every one hundred dollars of valuation of the taxable property in any district of the county, according to the last assessment thereof, as will produce the amount shown by said statement necessary to be raised by taxation upon the property of said district during the fiscal year;

*provided, first*, that the aggregate of the levies so made for county purposes and district purposes shall not exceed, for the year nineteen hundred and eight, in the county, or in any district or municipal corporation therein, the sum of thirty-five cents on each one hundred dollars of said valuation; and shall not exceed after the said year the sum of thirty cents on each hundred dollars of said valuation; *provided, second*, that in any county where the aggregate valuation of the taxable property in any year, is less than two and one-half times that of the year nineteen hundred and four, and the county court is of the opinion that the maximum rate of levy herein named is insufficient, with other funds and revenues, for all county and district road purposes, and is further of opinion that it is not expedient to submit to the voters the question of additional levy as provided in section five, or of special levy as provided in section six, the county court may for any such year, lay a levy in cents on each one hundred dollars of such taxable property of such portion of one hundred and four cents, as the aggregate of the taxable property in the year nineteen hundred and four, bears to the aggregate thereof in the year for which such levy is to be laid; as, for instance, to illustrate: In any such case, where the said aggregate in such year is double that of the year nineteen hundred and four, the maximum levy in any such county and district thereof for such year, shall not exceed fifty-two cents on each one hundred dollars of said valuation for said purposes; *provided, third*, that the county court of any county having no debt, bonded or funded, or otherwise, and which does not lay a levy exceeding that prescribed in the first proviso of this section, may in the year nineteen hundred and nine, lay a levy not exceeding twenty cents on each one hundred dollars of valuation of the taxable property of the county, to be called special bridge levy, for the purpose of building bridges; and such levy may be continued for four successive years after said year of nineteen hundred and nine. The fund arising from such levy shall be used for the purpose herein designated, and no other.

And said special bridge levy cannot be laid in the year one thousand nine hundred and nine, if seventy-five per cent of the special bridge levy for the year one thousand nine hundred and eight, has not been expended during the year of one thousand nine hundred and eight for the purpose of building new bridges.

(House Bill No. 176.)

## CHAPTER 67.

AN ACT to amend and re-enact sections seven, eight, nine, seventy-three and eighty-four of chapter twenty-nine of the code, and to enact section thirteen thereof, relating to assessors.

(Passed February 25, 1909. In effect ninety days from passage. Approved by the Governor March 1, 1909.)

- Sec.
7. Assistant assessors, when shall be appointed eligibility to appointment; office assistant; salary.
8. By whom appointed; term of and oath of office; vacancies; how filled.
9. Apportionment of work of assistant assessors.
13. Additional penalty for failure of taxpayers to return property for taxation within time limit.
73. Failure of duty in listing and re-

- Sec.
- turning property, etc., penalties therefor; forfeitures and enforcement; prosecuting attorneys fee; collection of costs; appraisement of property of deceased persons; lien to secure judgment.
84. Return in writing to board of public works by railroad and other companies and corporations; returns must be sworn to.

*Be it enacted by the Legislature of West Virginia:*

That section seven, eight, nine, seventy-three and eighty-four of chapter twenty-nine of the code be amended and re-enacted and that section thirteen be enacted so as to read as follows:

Sec. 7. In every county, whose population, as shown by the next registration of voters last preceding the election of an assessor, on the basis of a population of five for each voter so registered, does not exceed twenty thousand, there shall be appointed two assistant assessors; in every county whose population is thus shown to exceed twenty thousand and not to exceed thirty thousand, there shall be appointed three assistant assessors, and in every county whose population is thus shown to exceed thirty thousand, there shall be appointed four assistant assessors; each of said assistant assessors shall be a voter and a resident of the county in which he is appointed.

There may be appointed in each county one additional assistant to the number heretofore provided, to be known as "the office assistant," who shall have the same power to assess property as the assessor and other assistants and shall also stay in the office of the assessor throughout the year and perform the clerical work of the office. The salary of such assistant shall be fixed by the county

court and shall not be less than five hundred dollars nor more than nine hundred dollars annually.

Sec. 8. The assistant assessors shall be appointed by the assessor, with the advice and consent of the county court of the counties for which they are to be appointed. Not more than one assistant shall be appointed from any magisterial district. They shall be appointed for the same term as that for which the assessor was elected and shall be subject to removal by the assessor or by the county court. They shall take the same oath of office prescribed for the assessor. Vacancies occurring from any cause in the office of any assistant assessor, shall be filled in the same manner provided for the appointment to full terms of office, and shall be for the unexpired term made vacant.

Sec. 9. The assessor, after consulting with his assistants, shall apportion the work of assessing property for the purpose of taxation among his assistants and himself as nearly equal as possible to magisterial districts, and may, from year to year, make such changes in the apportionment of work as to him may seem proper.

Sec. 13. In addition to the other penalties provided by this chapter for the failure of any taxpayer to return his property for taxation within the time provided by law, the assessor may double the assessment made against such taxpayer for the preceding year as the assessment for the current year, and the defaulting taxpayer shall be denied all remedy provided by law from any assessment so made.

Sec. 73. If any person whose duty it is by law to list any real or personal property, refuse to furnish a proper list thereof or refuse to furnish the list within the time provided by law, or to make such oath as is required by this chapter; or if any person refuse to answer, or answer untruly, any question lawfully asked by the assessor, or fail or refuse to deliver any statement required by law, he shall forfeit not less than twenty-five nor more than one hundred dollars, and he shall be denied all remedy provided by law for the correction of any assessment made by the assessor. If any person fail to give a true list of all his property, which should be assessed, he shall, in addition, forfeit ten per centum of the value of the property not listed and not otherwise taxed. Such forfeiture may be enforced for any such default occurring in any year hereafter, not exceeding five prior to the time the same is

discovered. Each failure to make a true list as herein required shall constitute a separate offense, and the forfeiture shall apply to each of them, but all such forfeitures to which the same person is liable shall be enforced in one proceeding against such person or his estate and shall not exceed fifty per cent of the property not listed. It shall be the duty of the state tax commissioner or prosecuting attorney of the county in which the defaulting taxpayer resides, or in which the property which should have been listed is located, to enforce the collection of the same in the name of the state of West Virginia against the defaulting taxpayer, or his personal representative, in the circuit court, upon motion, whereof the defendant shall have at least twenty days' notice. Either party shall have the right to have the issue tried by a jury, and the state, as well as the defendant, shall have the right to an appeal. The prosecuting attorney shall receive ten per centum of the amount received as his compensation, and an attorneys' fee of ten dollars, or if the suit be instituted by the state tax commissioner ten per centum of the amount collected and the attorneys' fee of ten dollars shall be paid to any person employed by the state tax commissioner to prosecute such proceedings, to be taxed as a part of the costs against the defendant, in the event a judgment is recovered against him; the residue collected on said judgment shall be turned over to the sheriff and his receipt taken for the same. The sheriff shall apportion said fund among the state, county, district and municipalities which would have been entitled to the tax on said property if it had been assessed, in the proportion that the rate of taxation for each purpose, for the current year, bears to the sum of the rates for all purposes. The return of the assessor showing that any person is the owner of any amount of property liable to taxation shall be *prima facie* evidence that such taxpayer was called upon by the assessor to list his property but the return shall further show whether the valuation placed on such property listed therein is the valuation of the assessor or the valuation of the owner of the property. And when the list of property returned by the appraisers of the estate of any deceased person shows an amount greater than the last assessment list of such deceased person next preceding the appraisalment of his estate, it shall be *prima facie* evidence that such deceased person returned an imperfect list of his property; *provided, however*, that any one liable for the

tax or his personal representative, may always be permitted to prove by competent evidence that the discrepancy, between said assessment list and the appraisal of the estate, is caused by a difference of valuation returned by the assessor and that made by the appraisers of the same property; or by property acquired after assessment; or that any property enumerated in the appraiser's list had been otherwise listed for taxation, or that it was not liable to taxation. Any judgment recovered under this section shall be a lien, from the time of the service of the notice, upon all the real estate and personal estate of such defaulting taxpayer, owned at the time or subsequently acquired, in preference to any other lien.

Sec. 84. On or before the first day of April in each year a return in writing to the board of public works shall be delivered to the state tax commissioner by the owner or operator of every railroad, wholly or in part within this state; by the owner or operator of every railroad bridge upon which a separate toll or fare is charged; by the owner or operator of every car or line of cars used upon any railroad within the state for transportation or accommodation of freight or passengers, other than such owners or operators as may own or operate a railroad within the state; by the owner or operator of every express company or express line, wholly or in part within this state, used for the transportation by steam or otherwise of freight and other articles of commerce; by the owner or operator of every pipe line, wholly or in part within this state, used for the transportation of oil or gas or water, whether such oil or gas or water be owned by such owner or operator or not, or for the transmission of electrical or other power, or the transmission of steam or heat and power or of articles by pneumatic or other power; and by the owner or operator of every telegraph or telephone line, wholly or in part within this state, except private lines not operated for compensation. The words "owner or operator," as applied herein to railroad companies, shall include every railroad company incorporated by or under the laws of this state for the purpose of constructing and operating a railroad, or of operating part of a railroad within this state, whether such railroad or any part of it be in operation or not; and shall also include every other railroad company, or persons or associations of persons, owning or operating a railroad or part of a railroad in this state on which freight or passengers, or both, are carried for



compensation. The word "railroad," as used herein includes every street, city, suburban or electric or other railroad, or railway. The word "owner or operator," as applied herein to express companies shall include every express company incorporated by or under the laws of this state, or doing business in this state, whether incorporated or not, and any person or association of persons, owning or operating any express company or express line upon any railroad or otherwise, doing business partly or wholly within this state. Such return shall be signed and sworn to by such owner or operator if a natural person, or, if such owner or operator shall be a corporation, shall be signed and sworn to by its president, vice-president, secretary or principal accounting officer, and shall show in detail particulars as hereinafter set forth, for the year ending on the thirty-first of December next preceding.

(Senate Bill No. 51.)

### CHAPTER 68.

AN ACT to amend and re-enact sections fifty-four, eighty-seven, ninety-five, one hundred, one hundred and two, one hundred and seven, one hundred and fifteen, one hundred and twenty-a, one hundred and twenty-one and one hundred and twenty-six of chapter thirty-two of the code, and to add to said chapter sections three-a, forty-two-a, eighty-seven-a and one hundred and seventeen-a, relating to license taxes.

(Passed February 25, 1909. In effect from passage. Approved by the Governor March 1, 1909.)

- Sec.  
 3-a. Injunction against persons refusing to pay license.  
 42 a. Duties of tax commissioner with regard to persons refusing to pay license; commissioner may appoint agents; remedy of aggrieved parties.  
 51. Times sheriffs shall pay collections to the state treasury.  
 87. Retail liquor license, \$1,000.00.  
 87-a. License to solicit orders, \$100.00.  
 95. Brokers' license, \$500.00; real estate, \$50.00; term defined.  
 100. License for junk dealer or solicitor, \$25.00.  
 102. House boat license, \$10.00.  
 107. Money broker or private banker, \$25.00; terms defined.

- Sec.  
 115. License to sell sewing machines, etc., \$10.00; organs or musical instruments, \$20.00; lightning rods, \$10.00; book agents, etc., \$10.00.  
 117. Theatrical or other performance on show boats, \$100.00.  
 120-a. Social clubs, according to membership, \$200.00 and \$300.00; character of clubs defined; violations and how punished.  
 121. Penalties for default in license tax; duties of officers; additional penalties.  
 126. License taxes on corporations based on authorized capital stock.

*Be it enacted by the Legislature of West Virginia:*

That sections fifty-four, eighty-seven, ninety-five, one hundred, one hundred and two, one hundred and seven, one hundred and fifteen, one hundred and twenty-a, one hundred and twenty-one, and one hundred and twenty-six of chapter thirty-two of the code be amended and re-enacted, and that sections three-a, forty-two-a, eighty-seven-a and one hundred and seventeen-a, be added to said chapter, so that the same shall read as follows:

Sec. 3-a. If any person fail or refuse to pay any license tax due the state, in addition to all other penalties and remedies provided by law, the circuit court of the county, or the judge thereof in vacation, in which the business is connected, upon application, in the name of the state, of any officer of the county or of the state, shall grant an injunction inhibiting such person from continuing the business until the full amount of the license tax and penalty prescribed by law and due the state is paid.

Sec. 42-a. If the state tax commissioner shall find any person liable to the state for the payment of license tax, he may issue a license to such person and collect the amount of the tax due thereon. He shall keep a full and accurate record of all licenses issued and taxes collected by him, and make report thereof to the auditor in the manner prescribed for like reports of sheriffs and county clerks. If any person refuse to pay the tax for any license so issued, the state tax commissioner may place the tax in the hands of the sheriff for collection, and all the provisions of this chapter relating to the collection of license taxes by the sheriff shall apply thereto. The state tax commissioner, with the approval of the governor, may appoint agents to collect license taxes due the state under the provisions of this chapter, or to collect taxes due under the provisions of chapter thirty-three of the code. The compensation of such agents shall be fixed by the board of public works and paid out of the taxes so collected.

Any person feeling aggrieved by the conclusion of the state tax commissioner in reviewing the decision of the county clerk, as provided by section forty-two, within thirty days from the time any such decision is rendered, may make application to the circuit court of the county wherein such aggrieved person resides, to review the decision of the state tax commissioner. The circuit court

shall review the action of the state tax commissioner, affirm the same if found to be in accordance with the law, and if found to be contrary to law, reverse the same, and fix the amount of the tax according to law and shall enter an order directed to the county clerk to issue a certificate of license to conform to the findings of the circuit court. The state tax commissioner shall have at least ten days' written notice of any such hearing before the circuit court. An appeal from the decision of the circuit court may be had by either party to the supreme court of appeals, as in other cases.

Sec. 54. Every sheriff and collector shall account for and pay into the treasury of the state, the state taxes on state licenses at the following times: The taxes assessed during the quarter ending March thirty-first, shall be accounted for and paid on or before the twentieth day of April; taxes assessed during the quarter ending Junethirtieth, shall be accounted for and paid on or before the twentieth day of July; taxes assessed during the month of July shall be accounted for and paid on or before the twentieth day of August; taxes assessed during the months of August and September shall be accounted for and paid on or before the twentieth day of October, and taxes assessed during the quarter ending December thirty-first shall be accounted for and paid on or before the twentieth day of January.

Sec. 87. On every license to sell spirituous liquors, wine, porter, ale, beer and drinks of a like nature at retail, one thousand dollars, and the amount of such tax shall be deposited with the sheriff and a certificate showing such deposit shall be filed with the clerk of the county court at the time the application is filed for a license under the provisions of section twelve of this chapter, and no such application shall be considered by the county court unless accompanied by such certificate of deposit.

Sec. 87-a. After July first, one thousand nine hundred and nine, on every license to solicit or receive orders by the licensee or his agent in person for spiritous liquors, wine, porter, ale or beer or any drink of like nature, one hundred dollars, and all the provisions of this chapter relative to a license to sell spirituous liquors, wine, porter, ale or beer or any drink of like nature at wholesale or retail are hereby made applicable to a license to solicit or receive orders for such liquors, except that a license to solicit or receive orders for spirituous liquors, wine, porter, ale or beer or any drink

of like nature shall be co-extensive with the county in which it is granted; *provided*, that a license to sell at wholesale spirituous liquors wine, porter, ale or beer or any drink of like nature shall authorize the holder thereof to solicit and receive orders at wholesale for such liquors or drink in any county where license is granted; *provided, further*, that nothing herein contained shall authorize the holder of any retail license who has paid the license tax provided by section eighty-seven of this chapter to solicit or receive orders in any incorporated city, town or village unless duly authorized by the municipal authorities thereof.

Sec. 95. On every license to practice the business of a stock broker, merchandise broker, or other broker, other than that of a pawn broker, by buying or selling for others, stock, securities, merchandise or other property, for commission or reward, fifty dollars; or to carry on a bucket shop, or to engage in transactions specified in clause (f) of section two of this chapter, five hundred dollars, in addition to all other taxes prescribed by this chapter or by any other law.

On every license to practice the business of real estate agent, or real estate broker, fifty dollars, in addition to all other taxes prescribed by this chapter or by any other law.

The term real estate agent shall include any person or corporation, that, for a commission, compensation or reward, is engaged in the selling of, or who negotiates sales of real estate belonging to another or others, or obtains or places loans for others on real estate or advertises for sale or solicits the sale of real estate belonging to another or others, or collects rents and attends to the letting and sale of houses and lands.

Sec. 100. On every license to carry on the business of a junk dealer, twenty-five dollars; and on every agent, solocitor, canvasser or salesman, appointed by any junk dealer for the purpose of buying junk, ten dollars. A junk dealer's agent's license shall be co-extensive with the state.

Sec. 102. On every license to maintain or occupy a house boat, or like structure or vessel, ten dollars.

Sec. 107. On every license to carry on the business of money broker or private banker, twenty-five dollars. The term money broker or private banker shall include every person, firm or incorporated company, other than a regularly organized state or

national bank, that lends money on real or personal security, discounts paper, eashes time, or engages in any business of a similar or like character.

Sec. 115. On every license to sell sewing machines, stoves or ranges, if the salesman thereof travel with or without a vehicle, ten dollars; on every license to sell organs or other musical instruments, if the salesman thereof travels with or without a wagon or other vehicle, twenty dollars; and on every license to sell lightning rods, if the salesman thereof travels, ten dollars; on every license to travel and receive subscriptions for, or in any manner furnish books, maps, prints, pamphlets or periodicals, except such books, pamphlets or periodicals, that be of a religious or ethical nature, ten dollars; *provided*, that a license to travel and receive subscriptions for, or furnish books, map, prints, pamphlets, or periodicals, shall be granted by the auditor and be co-extensive with the state.

Sec. 117-a. The state tax on every license for a theatrical or other performance, when such performance is confined exclusively to show boats plying the navigable streams of the state, shall be one hundred dollars annually. Such license shall be granted by the state tax commissioner and shall be confined to the navigable streams of the state.

Sec. 120-a. Any social club, established, organized, or maintained by a lodge or any order having a grand lodge in this state or the United States, or by the members of such lodge or order or any other *bona fide* fraternal or social club which shall have been in existence for a period of two years, and at the time of its application shall be chartered under the laws of this state, which desires to keep on hand at its club house, or other place of meeting, spirituous liquors, wine, porter, ale, or beer or any drink of like nature to be sold directly or indirectly, or given away to the members thereof, may on application be granted a license therefor by the county court of the county wherein its club house or other place of meeting is located, or if such club house be located in a municipal corporation of a population of five thousand or more, or in a municipality which is vested with the sole power of granting license, such license may be granted by the council or license court, of such municipality. If such license be authorized by the county court, the clerk thereof shall issue the certificate of license and assess the tax thereon, which tax shall be collected in the manner provided in this

chapter for the collection of other like taxes. If such license be authorized by a municipal corporation under the provisions of this act a certified copy of the order authorizing such license shall be presented to the clerk of the county court, who shall thereupon issue the license certificate and assess the tax thereon, which tax shall be collected as hereinbefore provided. If the club house or other place of meeting is located in a municipal corporation not vested with the power to grant licenses under this act the applicant shall procure from the clerk of such municipality a certified copy of the order of the council thereof assenting to such license, and shall file the same with his application to the county court. On every license granted under this section, the annual tax shall be two hundred dollars if the *bona fide* membership does not exceed two hundred, and if in excess of two hundred, three hundred dollars; *provided*, that if any such social club operates a part only of the year it may procure the license for that part mentioned in its application, and the tax thereon shall be computed in proportion to the annual tax for such time as such license is granted, but the same shall not be computed for a less time than three months. Any social club so licensed shall be entitled, without any other license, either state, county or municipal, to sell, distribute or dispense spirituous liquors, wine, porter, ale, or beer, or any drink of like nature to *bona fide* members of such club or order within its club house which shall be designated and described in the license; but no minor or person who is an habitual drunkard shall be considered a member of such club. Upon complaint of any state or county officer, or any taxpayer of the county, that a social club having the license above provided for, is being conducted in violation of the provisions of this act, or that any club or other association of persons is being conducted for the purpose of violating or evading the laws regulating the licensing and sale of intoxicating liquors, and after service of such complaint on the president, secretary, or other officer of such club, at least ten days before the hearing on said complaint, the circuit court of the county or the judge thereof in vacation, shall inquire into the truth of such complaint; and if such court or judge shall find the complaint to be true, he shall declare the license of such club or association revoked, and shall enjoin the members of such club or association from exercising any further privilege under its license; and in addition

any person who violates any of the provisions of this section shall be subject to the penalties in this chapter prescribed for selling intoxicating liquors without a license.

Sec. 121. If any person shall conduct any business or occupation or exercise any right or privilege without the license required by law therefor, except such as are named in this chapter in clauses *b*, *c*, *d*, and *f*, of section one and in clauses *r*, *s*, and *t*, of section two, he shall, in addition to paying the tax required, pay a penalty of ten per cent. of the annual tax for each month, or fractional part thereof, for such time as he was in default. Such penalty shall be deemed license tax, and shall be assessed and collected in the manner prescribed in this chapter as to other license taxes, except that the license certificate issued therefor and the report thereof made to the auditor, shall state separately the amount of the license tax proper, and of the penalty. It shall be the duty of the officer who issues the certificate of license, to state therein the full amount of the tax thereof and of the penalty separately; and it shall be the duty of the officer charged with the collection of the tax on such license to collect the full amount thereof and of the penalty. It shall be the duty of the auditor to charge the officer with the full amount of such tax and penalty. If any such officer shall violate this section he shall be subject to a fine not exceeding one hundred dollars; and, in addition thereto, the officer whose duty it was to collect such tax and penalty, shall be liable for the amount thereof he failed to collect that might have been collected by due diligence. If any person shall conduct any business named in clauses *b*, *c*, *d*, and *f*, of section one or in clauses *r*, *s*, or *t*, of section two of this chapter without the required license, he shall in addition to all other penalties prescribed by law, be liable for the license tax prescribed therefor for the time such business was carried on without a license, and also the above named penalty of ten per cent, which may be recovered from him in a civil action in any court having jurisdiction.

Sec. 126. Every resident corporation shall pay an annual license tax on its charter, based on its authorized capital stock as follows:

If the authorized capital stock be five thousand dollars, or less, ten dollars.

If more than five thousand dollars and not more than ten thousand dollars, fifteen dollars.

If more than ten thousand dollars and not more than twenty-five thousand dollars, twenty dollars.

If more than twenty-five thousand dollars and not more than fifty thousand dollars, twenty-five dollars.

If more than fifty thousand dollars and not more than seventy-five thousand dollars, forty-five dollars.

If more than seventy-five thousand dollars and not more than one hundred thousand dollars, fifty dollars.

If more than one hundred thousand dollars and not more than one hundred and twenty-five thousand dollars, fifty-five dollars.

If more than one hundred and twenty-five thousand dollars and not more than one hundred and fifty thousand dollars, sixty dollars.

If more than one hundred and fifty thousand dollars and not more than one hundred and seventy-five thousand dollars, seventy dollars.

If more than one hundred and seventy-five thousand dollars and not more than two hundred thousand dollars, seventy-five dollars.

If more than two hundred thousand dollars and not more than three hundred thousand dollars, ninety dollars.

If more than three hundred thousand dollars and not more than four hundred thousand dollars, one hundred and five dollars.

If more than four hundred thousand dollars and not more than five hundred thousand dollars, one hundred and twenty dollars.

If more than five hundred thousand dollars and not more than one million dollars, one hundred and seventy dollars.

If more than one million dollars, one hundred and seventy dollars, and sixty dollars on each million dollars or fraction thereof, in excess of one million dollars.

(Senate Bill No. 96.)

## CHAPTER 69.

AN ACT to amend and re-enact section seven of chapter thirty of the code of one thousand nine hundred and six, serial section eight hundred and twenty-eight, as amended by chapter ten of the acts of the legislature of one thousand nine hundred and eight; and section thirty-one of chapter thirty of the code of one thousand nine hundred and six, serial section eight hundred and fifty-three, relating to the collection of taxes.



(Passed February 20, 1909. In effect ninety days from passage. Became a law without the approval of the Governor.)

<p>Sec. 7. Sheriff to give notice for collection of taxes; where they shall be posted; discounts allowed; penalties for failure, etc.;</p>	<p>Sec. 31. Sheriff's or collector's commission; limitations of commissions.</p>
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*As it enacted by the Legislature of West Virginia:*

That section seven of chapter thirty of the code of one thousand nine hundred and six, serial section eight hundred and twenty-eight, as amended by chapter ten of the acts of the legislature of one thousand nine hundred and eight; and section thirty-one of chapter thirty of the code of one thousand nine hundred and six, serial section eight hundred and fifty-three, be and the same are hereby amended and re-enacted, to read as follows:

Sec. 7. It shall be the duty of the sheriff or collector to give notice by posting at the places of voting in each district, and at not less than six other public places in the district, for at least twenty days before the time appointed, that he will attend at one or more of the most public and convenient places for the people in such districts, such places to be specified in said notice, between the first day of October and the last day of November following, for the purpose of receiving taxes due by the people residing or paying taxes in said district, and that he will make a discount of two and one-half per cent, to all such persons as shall pay all their taxes on or before the last day of November of that year, and not otherwise; which discount shall be made on the whole amount of taxes and levies of every kind so collected by said sheriff or collector. Any sheriff or collector failing to post said notice as herein required shall forfeit one hundred dollars for every such failure. The county court of any county may order that the notice hereinbefore required shall also be given by the sheriff or collector by advertising the same. After such order is made, and until it is set aside, the sheriff or collector shall, besides posting as hereinbefore required, advertise such notice once a week for three successive weeks, next preceding the first day of October in every year, in all newspapers published in said county, and for each failure so to advertise, the sheriff or collector shall forfeit one hundred dollars.

Sec. 31. Every sheriff or collector shall be allowed a commission of five per cent, on the amount of all county levies, dis-

trict levies, and district levies for free school purposes, collected from the taxpayers, except those taxes for said purposes paid through the auditor's office from railroads and other persons and corporations, on which last mentioned taxes shall receive a commission of one and one-half per cent; *provided, however*, that in any county where the gross income of the sheriff's office, including the salaries authorized by law to be fixed by the county court of the respective counties, and paid out of the county treasury, the commissions allowed by this section, and all other allowances, fees, costs, percentages, perquisites, commissions and emoluments, amounts to less than three thousand dollars, the sheriffs of such counties may be allowed such additional commissions, not to exceed two and one-half per cent on county and all district levies, other than those taxes for said purposes paid through the auditor's office from railroads and other persons or corporations, as aforesaid, or so much of said additional commission of two and one-half per cent as will not make the gross income of the said office of sheriff in such counties amount to a sum in excess of three thousand dollars and upon the amount of state taxes with which he is chargeable, if he pay the same into the state treasury within the time required by law, as follows:

Upon any sum not exceeding ten thousand dollars, seven and one-half per cent; upon any sum exceeding ten thousand dollars and not exceeding twenty thousand dollars, five per cent; upon any sum exceeding twenty thousand dollars and not exceeding thirty thousand dollars, four per cent; and upon all sums exceeding thirty thousand dollars, three per cent. Upon all taxes so chargeable and not paid into the state treasury within the time required by law, he shall only be allowed a commission of two and one-half per cent. But no commission shall be allowed upon the taxes returned delinquent, except when such real estate is sold for non-payment of such taxes. If the sheriff or collector pay any taxes into the treasury before he has collected the same, he shall nevertheless have the same remedy for the collection thereof by distress, or otherwise, as if the same had not been paid to the state treasurer, except that he shall not have a lien on the real estate on which said taxes were assessed therefor.

(Senate Bill No. 163.)

## CHAPTER 70.

AN ACT to amend and re-enact section five of chapter eight of the acts of the extra session of one thousand nine hundred and eight, of the legislature of West Virginia, providing for grading, paving, sewerage and otherwise improving the streets and alleys of municipal corporations, and the method of paying for same.

(Passed February 24, 1909. In effect ninety days from passage. Approved by the Governor February 27, 1909.)

Sec.

5. Manner of serving notice on owners of property assessed for street and other improvements; non-residents may be notified

Sec.

by publication in some newspaper; service on railroads through agent or attorney; infants and insane persons.

*Be it enacted by the Legislature of West Virginia:*

That section five of chapter eight of the acts of one thousand nine hundred and eight be and the same is hereby amended, to read as follows:

Sec. 5. A notice of the passage of the resolution required in the last preceding section, embodying a copy of said resolution shall be served upon the owner of each piece of property to be assessed, said service to be made in the manner provided in section one of chapter one hundred and twenty-one of the code; *provided*, that if any of the owners or persons be not residents of the county wherein said improvement is proposed, or if it appears by the return, in any case, that the owner cannot be found, then a notice of the passage of said resolution shall be published in some newspaper of general circulation in the city, town or village in which said improvement is proposed to be made, once a week for two successive weeks, and such notice, whether by service or publication, shall be completed at least three days before said improvement is begun or the assessment is levied, and the return of the officer serving such notice or a certified copy of said return, or where published, the certificate of the publisher of said newspaper, shall be *prima facie* evidence of the service of the notice as herein required.

*Provided, further*, that if the owner be a railroad company or other corporation that notice shall be served upon some agent or attorney for said railroad company or corporation within the

county wherein such city, town or village is situate; *provided*, there be such agent or attorney within such county, and such service shall be made two weeks before said improvement is begun or the assessment is levied.

Notice upon infants may be served on their guardians and upon insane persons by service upon their committee.

(House Bill No. 268.)

## CHAPTER 71.

AN ACT to repeal chapter thirty-two of the acts of the legislature at the extra session, one thousand nine hundred and eight, which amended and re-enacted chapter fifty-five of the code, so far as the same relates to fraternal beneficiary societies, and to enact in lieu thereof a chapter of the code to be known as chapter fifty-five-a, relating to the organization, operation and management of fraternal beneficiary societies.

(Passed February 20, 1909. In effect ninety days from passage. Became a law without the approval of the Governor.)

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| <p>Sec.</p> <ol style="list-style-type: none"> <li>1. Fraternal beneficial societies; how constituted.</li> <li>2. Societies operating on the lodge system.</li> <li>3. When deemed to have representative form of government.</li> <li>4. When exempt from provisions of state insurance laws.</li> <li>5. Provision for payment of death and temporary or permanent physical disability benefits; surrender values.</li> <li>6. Death benefits; who paid to; beneficiaries may be changed;</li> <li>7. Who may be admitted to membership.</li> <li>8. Certificates issued; what shall specify; agreement between society and member; changes in or additions to charter.</li> <li>9. Reserve fund; how held and disbursed; how created.</li> <li>10. Funds may be invested; in what manner.</li> <li>11. Payment by members; use that may be made of funds.</li> <li>12. Formation of fraternal benefit society; corporate name; purpose for which formed; control and management of affairs and funds; papers and bond to be filed with insurance commissioner; duties of commissioner; advance payments by members; medical examination</li> </ol> | <p>Sec.</p> <ol style="list-style-type: none"> <li>of applicants for death benefits; advance payments held in trust; preliminary certificate issued by insurance commissioner; expiration when.</li> <li>12. Rights of societies transacting business when this act becomes effective.</li> <li>14. Transfer of membership to unauthorized societies.</li> <li>15. Action in courts for collection of claims; when.</li> <li>16. License, after January 1, 1910, to societies transacting business when this act became effective.</li> <li>17. Foreign societies; license required; how obtained; license fee; refusal to license and revoking of authority.</li> <li>18. Attorney for foreign and non-resident societies.</li> <li>19. Legislative and governing bodies of domestic societies; meetings may be held where.</li> <li>20. Officers and, members of supreme, grand and subordinate bodies not liable for payment of benefits.</li> <li>21. Constitution and laws of societies binding on society, its members and beneficiaries; when.</li> <li>22-a. Effect of act on grand lodges.</li> <li>22-b. Money not liable to attachment for debt.</li> </ol> |
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| <p>Sec.<br/>23. Societies must file with commissioner certified copies of constitution, laws and amendments.</p> <p>24. Annual statement of condition, under oath of president or other officers, required; fee for filing same; additional rates to meet deficiency.</p> <p>25. Powers of insurance commissioner to visit and examine societies; expense therefor; procedure against societies failing to comply with requirements.</p> <p>26. Examination of foreign societies by commissioner; his powers and duties relative thereto.</p> <p>27. Restriction upon commissioner while making investigation; right of society officers to hearing.</p> | <p>Sec.<br/>28. Course of procedure when foreign societies found conducting fraudulent business or exceeding authority.</p> <p>29. Certain subordinate lodges exempt from provisions of this act.</p> <p>30. Fraternal benefit societies declared charitable and benevolent institutions.</p> <p>31. Fraudulent representation in application for membership; penalty therefor; other false statements; penalties provided.</p> <p>32. Defining terms "society" "domestic society" "foreign society"; provisions and how construed.</p> <p>33. Inconsistent acts or parts of acts repealed.</p> |
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*Be it enacted by the Legislature of West Virginia:*

That chapter fifty-five-a of the code be enacted so as to read as follows:

Sec. 1. Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and a representative form of government and which shall make provision for the payment of benefits in accordance with section five hereof, is hereby declared to be a fraternal benefit society.

Sec. 2. Any society having a supreme governing or legislative body and subordinate lodges or branches, by whatever name known, into which members shall be elected and initiated or admitted in accordance with its constitution, laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the laws of such society, to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system.

Sec. 3. Any such society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members, or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws; *provided*, that the elective members shall constitute a majority in number and have not less than a majority of the votes, nor

less than the votes required to amend its constitution and laws, and, *provided, further*, that the meetings of the supreme or governing body, and the election of officers shall be held as often as once in four years.

Sec. 4. Except as herein provided, such society shall be governed by this act, and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter enacted shall apply to them, unless they be expressly designated therein.

Sec. 5. Every society transacting business under this act shall provide for the payment of death benefits and may provide for the payment of benefits in case of temporary or permanent physical disability, either as a result of disease, accident or old age; *provided*, the period of life at which the payment of benefits for disability on account of old age shall commence shall not be under seventy years, and may provide for the payment to such member as a cash dividend of a sum not exceeding the maximum named in the certificate of membership, after such certificate has been in force at least five years as provided by the laws and regulations of such association, and shall have the right to erect monuments to the memory of its deceased members. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, the option to surrender his certificate and accept in lieu thereof all or such a portion of the face value of his certificate as the laws of the society may provide; and, *provided*, that nothing in this act contained shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole life, which are payable only upon the death or disability of the member occurring within the term for which the benefit certificate may be issued.

Such society shall have the power to accept a part of the periodical contributions in cash, and charge the remainder as a lien on the certificate. And, *provided*, that such society shall also have the power to grant surrender values, not to exceed the net value of the certificates, less any surrender charge specified by the laws of the society.

Sec. 6. The payment of death benefits shall be confined to wife, husband, relative by blood to the fourth degree ascending or descending, step-father, step-mother, step-children, children by legal

adoption, or to a person or persons depending upon the member; *provided*, that if after the issuance of the original certificate the member shall become dependent upon the charity of an individual or of an institution, he shall have the privilege, with the consent of the society, to make such individual or institution his beneficiary. Within the above restrictions each member shall have the right to designate his beneficiary and from time to time have the same changed in accordance with the laws, rules or regulations of the society, and no beneficiary shall have or obtain any vested interest in the said benefit, until the same has become due and payable upon the death of the said member. *Provided*, that any society may, by its laws, limit the scope of beneficiaries within the above classes.

Sec. 7 Any society may admit to beneficial membership any person over sixteen and under sixty years of age, who has been examined by a competent physician, and whose examination has been supervised and approved, in accordance with the laws of the society; *provided*, that no medical examination shall be required of persons applying for disability certificates, maturing at periods not exceeding six years, paying death benefits not exceeding three hundred and seventy-five dollars; and, *provided, further*, that any beneficiary member of such society, who shall apply for a certificate providing for disability benefits, need not be required to pass an additional medical examination therefor. Nothing herein contained shall prevent such society from accepting general or social members.

Sec. 8. Every certificate issued by any such society shall specify the maximum amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or if a voluntary association, the articles of association, the constitution and laws of the society and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same certified by the secretary of the society or corresponding officer, shall be received in evidence of the terms and conditions thereof; and any changes, additions or amendments to said charter or articles of incorporation, or articles of association, if a voluntary association, constitution or laws duly made or enacted subsequent to the issuance of the benefit certificate, shall bind the member and his beneficiaries and

shall govern and control the agreement in all respects, the same as though such changes, additions or amendments had been made prior to, and were in force at the time of the application for membership.

Sec. 9. Any society may create, maintain, invest, disburse and apply a reserve, emergency or surplus fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, no member or beneficiary having or acquiring any individual rights therein or becoming entitled to any apportionment or the surrender of any part thereof. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed, shall be derived from periodical or other payments by the members of the society and accretions of said funds.

Sec. 10. Any society may invest its funds in real estate for office or lodge purposes, and may hold or sell and convey any real estate acquired by foreclosure or received in satisfaction of loans. It may also invest its funds in liens against the certificates of its members (not exceeding ninety per cent of the reserved credit thereunder), or in government, state, provincial, county or municipal bonds, or bonds of any township, park or school district having taxing powers; *provided*, that such bonds shall be a direct obligation on all the taxable property within such municipality or district; or in mortgage bonds of any railroad company which has for the preceding two years been paying interest on its junior obligations, or in first mortgages, or first mortgage bonds or ground rents upon improved real estate, not exceeding fifty per cent of the market value thereof.

Sec. 11. Every provision for payment by members of such a society, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes and no part of the reserve, emergency or surplus funds or the net accretions of either or of any of said funds shall be used for expenses; *provided*, that expenses incident to the examination, investigation, adjustment and litigation of death and disability claims may be paid from the mortuary and disability funds; and that all expenses incident to the investment, care and maintenance of any reserve, emergency or surplus funds, or ex-



penses incident to litigation concerning the same, may be paid from said funds.

Sec. 12. Five or more persons, citizens of the United States, and a majority of whom are citizens of this state, who desire to form a fraternal benefit society as defined by this act, may make and sign (giving their addresses) and acknowledge before some officer competent to take acknowledgements of deeds, articles of incorporation, in which shall be stated:

*First.* The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or to lead to confusion.

*Second.* The purpose for which it is formed, which shall not include more liberal powers than are granted by this act; *provided*, that any lawful social, intellectual, educational, moral or religious advantages may be set forth among the purposes of the society, and the mode in which its corporate powers are to be exercised.

*Third.* The names, residences and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year until the ensuing election, at which all such officers shall be elected by the supreme legislative or governing body.

Such articles of incorporation and duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society and a bond in the sum of five thousand dollars with sureties approved by the insurance commissioner, conditioned upon the return of the advanced payments, as provided in this section, to applicants, if the organization is not completed within one year, shall be filed with the insurance commissioner who may require such further information as he deems necessary, and if the purpose of the society conform to the requirements of this act and all provisions of law have been complied with, the insurance commissioner shall so certify and retain and record the articles of incorporation in a book kept for that purpose, and furnish the incorporators a preliminary certificate, authorizing said society to solicit members as hereinafter provided.

Upon receipt of said certificate from the insurance commissioner,

said society may solicit members for the purpose of completing its organization and shall collect from each applicant the amount of not less than one death benefit payment, in accordance with its tables of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. But no such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit, until actual *bona fide* application for death benefit certificates have been secured upon at least five hundred lives, for at least one thousand dollars each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians and certificates of such examinations have been duly filed and approved by the chief medical examiner of such society, nor until there shall be established ten subordinate branches or lodges into which said five hundred applicants have been initiated, nor until there has been submitted to the insurance commissioner, under oath of the president and secretary or corresponding officer of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of regular periodical payments, nor until it shall be shown to the insurance commissioner by the sworn statement of the treasurer or corresponding officer of such society that at least five hundred applicants have each paid in cash at least one regular monthly payment of dues as herein provided for one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars, all of which shall be credited to the mortuary or disability fund on account of such applicants and no part of which may be used for expenses.

Said advanced payments shall during the period of organization be held in trust for, and, if the organization is not completed within one year as hereinafter provided, returned to said applicants.

The insurance commissioner may make such examination and require such further information as he deems advisable, and upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to such society a certificate to that effect. Such certificate shall be *prima facie* evidence of the existence of such society at the date of such certificate.

The insurance commissioner shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence, with like effect as the original certificate.

No preliminary certificate granted under the provisions of this section shall be valid after one year from its date, or after such further period, not exceeding one year as may be authorized by the insurance commissioner, upon cause shown, unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided, and the articles of incorporation in all proceedings thereunder shall become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such society shall have completed its organization and commenced business as herein provided. When any domestic society shall have discontinued business for the period of one year, its charter shall become null and void.

Sec. 13. Any society now engaged in transacting business in this state may exercise, after the passage of this act, all the rights conferred hereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this act, or it may be reincorporated hereunder, but no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time, in the manner provided therein, or in its constitution or laws, and all such amendments shall be filed with the insurance commissioner and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, constitution or laws.

Sec. 14. No domestic society shall transfer its membership or funds to any society not authorized by the insurance commissioner, to transact business in this state; nor shall any such society transfer its membership or funds to any licensed society, unless the said contract of transfer has been approved by two-thirds vote of the members of the supreme body of the society, whose membership is proposed to be transferred, and by a two-thirds vote of the trustees or board having charge of the society proposing to take such membership, such transfer to be approved by the insurance commissioner, of the states in which such societies were chartered.

Sec. 15. No member of any society organized or operating

under the provisions of this act, or his beneficiary, or his legal representatives, or any other person in any way interested in any of his benefits, or any person deriving legal rights from him, shall commence any action or other legal proceedings in any of the courts of this state, on account of his certificate, against such society, until after he shall have exhausted all the remedies provided in its constitution and laws for appeals and otherwise, that can be determined within three months after the filing of proof of death or disability.

Sec. 16. Any society now authorized to transact business in this state may continue such business until the first day of January next succeeding the passage of this act. The insurance commissioner shall then, if he finds that such society is complying with the provisions of this act, issue to it a license authorizing it to continue the transaction of business in this state. A duly certified copy of such license shall be *prima facie* evidence in any court or proceeding in this state that the licensee is a fraternal benefit society within the meaning of this act.

Sec. 17. No foreign society shall transact any business within this state without a license from the insurance commissioner. On seeking admission to do business in this state, such society shall file with the insurance commissioner a duly certified copy of its charter or articles of incorporation, or articles of association, if it is a voluntary association; a copy of its constitution and laws, certified by its secretary or corresponding officer; a power of attorney to the said insurance commissioner as hereinafter provided; a statement under oath by its president and secretary or corresponding officer, in the form hereinafter prescribed, duly verified by an examination made by the insurance commissioner or official of its home state, of its business for the preceding year, a certificate from the proper official in its home state, territory, district, province or country, that the society is legally organized; a copy of its application form, certificate of membership and of all circulars in use by it; and that it has the further qualifications required of domestic societies organized under this act, and has its assets invested as required by the laws of the state, territory, district, province, or country where it is organized. When such society meets the requirements herein specified, the insurance commissioner shall issue to it a license, for which the society shall pay to the said insurance commissioner a fee of twenty-five dollars. When the said insurance commissioner refuses to license any

society, or revokes its authority to do business in this state, he shall reduce his ruling, order or decision to writing and file the same in his office and shall furnish a copy thereof, together with a statement of his reasons therefor, to the officers of the society; and the action of the said insurance commissioner shall be reviewable by proper proceedings in any court of competent jurisdiction within this state; *provided, however*, that nothing contained in this or the preceding section, shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business therein.

Sec. 18. Every foreign society before being licensed to transact business in this state, shall appoint in writing the auditor and his successors in office to be its true and lawful attorney in the manner prescribed by the laws of this state relating to foreign and non-resident corporations, upon whom all legal process in any action or proceeding against it shall be served and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society and that the authority shall continue in force so long as any liability remains outstanding in this state.

Copies of such appointment, certified by said auditor, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate and shall be deemed sufficient service upon such society; *provided, however*, that no such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading or defense in less than thirty days after the date of such service. When legal process against any such society is served upon said auditor, he shall forthwith forward by registered mail one of the duplicate copies, prepaid and directed to its secretary or corresponding officer. The plaintiff in such process so served, shall pay to the auditor for the use of the state at the time of such service, a fee of two dollars, which shall be recovered by him as part of the taxable costs, if he prevails in the suit.

Sec. 19. Any domestic society may provide that the meetings of its legislative or governing body may be held in any state, district, province or territory wherein such society has subordinate

branches, and all business transacted at such meeting shall be as valid in all respects as if such meetings were held in this state. But its principal office shall be located in this state.

Sec. 20. Officers and members of the supreme, grand or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided in the laws and agreements of such society, but the same shall be payable only out of the funds of such society and in the manner provided by its laws.

Sec. 21. The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members, shall have the power or authority to waive any of the provisions of the laws and constitution of the society and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members.

Sec. 22 (a). All grand lodges by whatever name known, unless incorporated in this state, holding charters from a supreme governing body which are conducting business in this state, upon the passage of this act as a fraternal beneficiary society upon what is known as the separate jurisdiction plan, shall be treated as a federation of grand lodges and not as single state organization, and all reports required by the provisions of this act shall be made and furnished by the officers of such supreme governing body and shall embrace and contain the transactions, liabilities and assets of the entire order.

(b). No money or other benefits, charity or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment or other process or be seized, taken, appropriated or applied by any legal or equitable process or operation of law, to pay any debt or liability of a member or beneficiary, or of any person who may have a right thereunder, either before or after payment.

Sec. 23. Every society transacting business under this act shall file with the insurance commissioner a duly certified copy of all amendments of or additions to its constitution and laws within ninety days after the enactment of the same. Printed copies of the constitution and laws as amended, changed or added to, certified by the secretary or corresponding officer of the association shall be *prima facie* evidence of legal adoption thereof.

Sec. 24. Every society transacting business in this state, shall

annually, on or before the first day of March, file with the insurance commissioner, in such form as is hereinafter provided, a statement under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding and of its transactions for the year ending on the said thirty-first day of December.

The fee for filing the annual report herein required shall be ten dollars, which must be remitted to the insurance commissioner at the time the report is filed. The annual report shall be in such form as may be prescribed by the insurance commissioner of this state.

The laws of said society shall provide that if the stipulated payments by the members are insufficient to pay all matured death or disability claims in full, and to provide for the creation and maintenance of the funds required by its laws, additional or extra rates of contribution may be collected from the members to meet such deficiency.

Sec. 25. The insurance commissioner, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purposes of such examination, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society and may summon and qualify as witnesses under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and conditions of the society. The expenses of such examination shall be paid by the society so examined. Whenever after examination the insurance commissioner is satisfied that any domestic society has failed to comply with any provisions of this act, or is exceeding its powers; or is not carrying out its contracts in good faith; or is transacting business fraudulently; or whenever any domestic society, after the existence of one year or more, shall have a membership of less than three hundred, or shall determine to discontinue business, the insurance commissioner may present the facts relating thereto to the attorney general, who shall, if he deems the circumstances warrant, commence an action in *quo warranto* in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society, and shall proceed

at once to take possession of the books, papers, moneys and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society and to distribute its funds to those entitled thereto. No such proceeding shall be commenced by the attorney general against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date to be named in said notice, which shall not be less than thirty days after service of notice, to show cause why such proceedings should not be commenced.

Sec. 26. The insurance commissioner, or any person whom he may appoint, may examine any foreign society transacting or applying for admission to transact business in this state. The said insurance commissioner may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents, employees and other persons in relation to the affairs, transactions and conditions of the society. He may in his discretion accept in lieu of such examination the examination of the insurance department of the state, territory, district, province or country where such society is organized. All examinations made under the provisions of this section shall be made at the expense of the society examined.

If any such society, or its officers, refuse to submit to such examination, or to comply with the provisions of the section relating thereto, the authority of such society to write new business in this state shall be revoked until satisfactory evidence is furnished the insurance commissioner relating to the condition and affairs of the society, and during such revocation the society shall not write any new business in this state; *provided*, no such revocation shall be made until after at least thirty days' notice is given such society of the proposed revocation.

Sec. 27. Pending, during and after an examination or investigation of any such society, either domestic or foreign, the insurance commissioner shall make public no statement, report or finding, nor shall he permit to become public any statement, report or finding affecting the status, standing or rights of any such society until a copy thereof shall have been served upon the president or secretary, or corresponding officers, of such society, nor until



such society shall have been afforded a reasonable opportunity to answer any such statement, report or finding, and to make such showing in connection therewith as it may desire. If such statement, report or finding shall not be withdrawn after such hearing, it shall not thereafter be made public, except in connection with the answer or explanation of the society concerned.

Sec. 28. When the insurance commissioner on investigation is satisfied that any foreign society transacting business under this act has exceeded its powers, or has failed to comply with any provision of this act, or is conducting business fraudulently, or is not carrying out its contracts in good faith, he shall notify its president and secretary, or other officers corresponding thereto, of his findings, and state in writing the grounds of his dissatisfaction, and after reasonable notice require said society, on a date named, which date shall not be less than thirty days after service of notice, to show cause why its license should not be revoked. If on the date named in said notice such objections have not been removed to the satisfaction of the said insurance commissioner, or the society does not present good and sufficient reasons why its authority to transact business in this state should not at that time be revoked, he may revoke the authority of the society to continue business in this state. All decisions and findings of the insurance commissioner made under the provisions of this section may be reviewed by proper proceedings in any court of competent jurisdiction, as provided in section seventeen of this act.

Sec. 29. Nothing contained in this act shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the supreme lodge, Knights of Pythias), nor the Junior Order of United American Mechanics (exclusive of the beneficiary degree or insurance branch of the national council Junior Order United American Mechanics), nor to similar societies which do not issue insurance certificates; nor to an association of local lodges of a society now doing business in this state, which provide death benefits not exceeding three hundred dollars to any one person, or disability benefits not exceeding five hundred dollars in any one year to any one person, or both; nor to any contract of re-insurance of or between such local lodges of such society now doing business on such plan in this state, nor to domestic societies which limit their membership to the employees of a particular city or town,

designated firm, business house or corporation; nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year; *provided, always*, that any such domestic order or society which has more than five hundred members and provides for death or disability benefits, and any such domestic lodge, order or society which issues to any person a certificate providing for the payment of benefits, shall not be exempt by the provisions of this section, but shall comply with all requirements of this act. The insurance commissioner may require from any society such information as will enable him to determine whether such society is exempt from the provisions of this act.

Sec. 30. Every fraternal benefit society organized or licensed under this act is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district and municipal tax other than taxes on real estate and office equipment.

Sec. 31. Any person, officer, member or examining physician of any society authorized to do business under this act, who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court, and any person who shall wilfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such society for the purpose of procuring payment of the benefit named in the certificate of such holder, and any person who shall wilfully make any false statement in any verified report or declaration under oath required or authorized by this act, shall be guilty of perjury and shall be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury. Any person who shall solicit membership for, or in any manner assist in procuring membership in any fraternal benefit society not licensed to do

business in this state, or who shall solicit membership for, or in any manner assist in procuring membership in any such society not authorized as herein provided, to do business as herein defined in this state, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Any society, or any officer, agent or employee thereof, neglecting or refusing to comply with, or violating any of the provisions of this act, the penalty for which neglect, refusal or violation is not specified in this section, shall be fined not exceeding two hundred dollars upon conviction thereof.

Sec. 32. The word "society," as used in this act, shall be taken and construed as meaning a fraternal benefit corporation, society, order or voluntary association as defined in section one. The words "domestic society" shall be taken and construed as meaning a society organized or incorporated under the laws of this state. The words "foreign society" shall be taken and construed as meaning a society organized or incorporated under the laws of another territory, district, state, province or country.

All provisions of each section of this act except as otherwise provided shall be taken and construed as applying to both domestic and foreign societies.

Sec. 33. All acts and parts of acts inconsistent with this act are hereby repealed.

(House Bill No. 125.)

## CHAPTER 72.

AN ACT to amend and re-enact sections thirteen, twenty-one, twenty-two, twenty-four, twenty-six, twenty-seven, twenty-eight and twenty-nine, chapter twelve, acts of the legislature, one thousand nine hundred and seven, extra session, relating to the practice of pharmacy and the sale of medicines, drugs and poisons.

(Passed February 20, 1909. In effect ninety days from passage. Approved by the Governor March 1, 1909.)

Sec. 12. Practice of pharmacy; issuance of license; by whom; to whom; necessary qualifications; may

Sec.

Issue temporary permits; to whom; applications; to whom made; fees required.

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| <p>Sec.<br/>21. Unlawful to sell certain poisons,<br/>22. } except, etc.<br/>24. Provisions not applicable to the<br/>dispensing of drugs in not un-<br/>usual quantities on prescrip-<br/>tion.<br/>26. Provisions governing prescriptions<br/>delivered to persons; original<br/>prescription open to inspection;<br/>by whom; shall not apply to<br/>certain drugs dispensed in cer-<br/>tain quantities; shall not apply<br/>to certain remedies sold in good<br/>faith for certain ailments if ac-<br/>companied by specific directions<br/>for use; may sell for external<br/>use; rights of wholesaler,</p> | <p>Sec.<br/>manufacturer, etc.; sales to<br/>whom.<br/>27. Unlawful for physicians, etc., to<br/>prescribe certain substances ex-<br/>cept, etc.; penalty for viola-<br/>tion; grand juries to inquire<br/>into violations; duty as to vio-<br/>lations of board of pharmacy.<br/>28. Act not construed to authorize any<br/>person to carry on business of<br/>druggist, without obtaining li-<br/>cense, or sell liquors, etc., ex-<br/>cept, etc.; registered pharma-<br/>cist who is practicing physi-<br/>cian prohibited from selling<br/>liquors, etc., upon own pre-<br/>scription; penalty for violation.<br/>29. When not applicable.</p> |
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*Be it enacted by the Legislature of West Virginia:*

Sec. 13. The board of pharmacy may issue license to practice as pharmacists or assistant pharmacists in this state without examination, to such persons as have been legally registered or licensed as pharmacists or assistant pharmacists in other states; *provided*, that the applicant for such license shall present satisfactory evidence of qualification equal to those required from licentiates in this state, and that he was registered or licensed by examination in such other state, and that the standard of competence required in such other state is not lower than that required in this state, and, *provided, also*, that the board is satisfied that such other state accords similar recognition to the licentiates of this state; and, *provided, further*, that the board may, in the interval between examinations, issue temporary permits to graduates in pharmacy, or registered pharmacists of other states, applying for same, until the next meeting of the board, but the said permit shall not be renewed nor more than one permit granted to the same person. Applicants for license under this section shall, with their application, forward to the secretary of the board, the same fees as are required of other candidates for license.

*Schedule A.*

Sec. 21. Arsenic and its preparations, corrosive sublimate, red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnia, carbolic acid and essential oil of bitter almonds.

*Schedule B.*

Sec. 22. Aconite, belladonna, colchicum, conium, nux vomica,

henbane, safin, ergot, cotton root, cantharides, creosote, digitalis, and their pharmaceutical preparations, croton oil, chloroform, sulphate of zinc, sulphate of copper, acetate of lead, mineral acids and oxalic acid.

Sec. 24. The provisions of the last four sections shall not apply to the dispensing of drugs in not unusual quantities, on the prescription of physicians.

Sec. 26. No copy or duplicate of such written order or prescription shall be made or delivered to any person, but the original shall at all times be open to inspection by the prescriber and properly authorized officers of the law; *provided, however*, that the provisions of schedule "c" shall not apply to preparations containing not more than one-half grain of opium, or not more than one-half grain of codein, or not more than one-eighth grain of morphine, or not more than one-twelfth grain of heroine, or not more than one-thirty-second grain of cocaine, or not more than one-thirty-second grain of alpha or beta eucaine, or not more than two grains of chloral hydrate in each dose; *provided, also*, that the provisions of schedule "c" shall not apply to preparations containing opium and recommended and sold in good faith for diarrhoea and cholera, each bottle or package of which is accompanied by specific directions for use and a caution against habitual use, nor to powder of ipecac and opium, commonly known as Dovers powder, nor to liniments or ointments when plainly labeled "for external use only;" and *provided, further*, that the provisions of schedule "c" shall not apply to sales at wholesale, by jobbers, wholesalers and manufacturers to retail druggists, to regular practitioners of medicine, dentistry or veterinary medicines, nor to sales made to manufacturers of proprietary or pharmaceutical preparations for use in the manufacture of such preparations, nor to sales to hospitals, colleges, scientific or public institutions.

Sec. 27. It shall be unlawful for any practitioner of medicine, dentistry or veterinary medicine to furnish to or prescribe for the use of any habitual user of the same any cocaine, heroine, alpha or beta eucaine, opium, morphine, chloral hydrate or any salt or compound of any of the foregoing substances or their salts or compounds. And it shall also be unlawful for any practitioner of dentistry to prescribe any of the foregoing substances for any person not under his treatment in the regular practice of his profession, or for any practitioner of veterinary medicines to prescribe

any of the foregoing substances for the use of any human being; *provided, however*, that the provisions of this section shall not be construed to prevent any lawfully authorized practitioner of medicine from furnishing or prescribing in good faith for the use of any habitual user of narcotic drugs, who is under his professional care, such substances as he may deem necessary for his treatment, when such prescriptions are not given or substances furnished for the purpose of evading the provisions of this act. Any person who shall violate any of the provisions of sections one, two, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six and twenty-seven shall be guilty of a misdemeanor, and upon conviction, for the first offense shall be fined not less than twenty-five dollars nor more than fifty dollars; and upon conviction for a second offense, shall be fined not less than fifty dollars nor more than one hundred dollars; and upon the conviction of a subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars and may be imprisoned in the county jail for not more than six months, and, if a licensed pharmacist, physician, dentist or veterinary surgeon, his license shall be revoked. It shall be the duty of all judges of the circuit and criminal courts of this state at every regular term thereof to charge regularly impaneled grand juries to diligently inquire into and investigate all cases of the violations of the provisions of this act, and to make a true presentment of all persons guilty of such violations. It shall be the duty of the board of pharmacy to cause the prosecution of all persons violating the provisions of this act.

Sec. 28. Nor shall this act be construed to authorize any person to carry on the business of druggist without first having obtained a license therefor, or to sell, offer or expose for sale any of the liquors, drinks, mixtures or preparations mentioned in section one of chapter thirty-two of the code of West Virginia, except for medical, mechanical or scientific purposes; and no sale of any such liquors, drinks, mixtures or preparations, shall be made by any druggist or registered pharmacist for medical purposes, except upon the written prescription of a practicing physician in good standing in his profession and not of intemperate habits, specifying the name of the person and the quantity of such liquor to be furnished him; but no druggist or registered pharmacist who is a practicing physician shall himself or by his agent or clerk

sell any such liquors, drinks, mixtures or preparations upon his own prescription. Any person carrying on or in the business of a druggist who shall, in violation of this act, sell any such liquors, drinks, mixtures or preparations, shall be guilty of a misdemeanor and for such offense be fined not less than twenty-five dollars nor more than one hundred dollars. In any prosecutions against persons carrying on or interested in the business of a druggist for selling any such liquors, drinks, mixtures or preparations contrary to law, if the sale be proved, it shall be presumed that such sale was unlawful unless the contrary be shown.

Sec. 29. This act shall not apply to the sale of patent or proprietary medicines, nor to such ordinary drugs or dye-stuffs as are usually sold in a country store, but the term "ordinary drugs" shall not be held to include any of the poisons named in schedules "a," "b" and "c," nor any intoxicating liquors, but nothing in this act shall be construed to interfere with any legally qualified practitioner of medicine, dentistry or veterinary medicine, who is not the proprietor of a store for the dispensing or retailing of drugs, or who is not in the employ of such proprietor, in the compounding of his own prescriptions, or to prevent him from supplying to his patients such medicines as he may deem proper, if such supply is not made as a sale.

(House Bill No. 33.)

## CHAPTER 73.

AN ACT to define and regulate the practice of optometry.

(Passed February 26, 1909. In effect ninety days from passage. Approved by the Governor March 1, 1909.)

- Sec.
1. Practice of optometry defined.
  2. Governor shall appoint; whom; eligible when; term of office; vacancy; how filled; rules and regulations; compensation; may administer oaths.
  3. Applications; requirements; qualifications; examinations; regis-

Sec.

tration of applicant; certificate to be issued; exemption from examination; practitioners; what constitutes; exempted persons to make application within what time; waiver; photograph of registered person to be filed.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. The practice of optometry is defined to be the employ-

ment of any means other than the use of drugs, medicine or surgery for the measurement of the powers of vision, the employment of tests or examinations for the determination of the natural and functional deficiencies of the eye, and the adaptation of lenses for the aid thereof.

Sec. 2. The governor shall appoint, within ninety days after the passage of this act, a board of examiners in optometry. Such board of examiners shall consist of five optometrists, who shall possess sufficient knowledge of theoretical and practical optics to practice optometry and who shall have been residents of this state actually engaged in the practice of optometry and who shall have been residents of this state actually engaged in the practice of optometry for at least three years. The term of each member of said board shall be for three years, or until his successor is appointed, and vacancies shall be filled for the unexpired term only, but in the original appointment of the members of the board two shall be appointed for the term of one year, two for two years, and one for three years from July first, one thousand nine hundred and nine. Said board of examiners shall make such rules and regulations not inconsistent with the law, as may be necessary for the proper performance of its duties; such members shall receive five dollars per diem and traveling expenses to and from the place of meeting to be paid out of the state treasury; any member of the board may upon being duly designated by the board, or a majority thereof, administer oaths or take testimony concerning any matter within the jurisdiction of the board.

Sec. 3. Every person desiring to commence or to continue the practice of optometry later than six months after the passage of this act, except as hereinafter provided, upon presentation of satisfactory evidence, verified by oath, that he is more than twenty-one years of age and of good moral character, shall be examined by said board to determine his or her qualifications. Such proof shall consist of affidavits of three members of the West Virginia state optical society. And such examinations shall be confined to such as Gross' anatomy of the eyes, the use of the ophthalmoscope, retinoscope, ophthalmometer and the use of trial lenses, the general laws of optics and refraction as is essential to the practice of optometry. Every candidate successfully passing such examination shall be registered by said board as possessing the qualifications required by this act, and shall receive from said board a cer-



tificate thereof; but any person who shall submit to said board of examiners satisfactory proof as to his character, competency, and qualifications, and that he has been continuously in the practice of optometry in this state for more than two years prior to the passage of this article, may upon the recommendatiton of said board of examiners receive a certificate of exemption from such examination, which certificate shall be registered and entitle him to practice optometry under this article. Any one claiming to be qualified to examine eyes for the adjustment of glasses shall be deemed as practicing optometry. Every person entitled to a certificate of exemption as herein provided, must make application therefor and present the evidence to entitle him thereto, on or before the expiration of six months after the passage of this act, or ne shall be deemed to have waived his right to such certificate. Before any certificate is issued it shall be numbered and recorded in a book kept by the secretary of said board of examiners and its number shall be noted upon the certificate. A photograph of the person registered shall be filed with the record and a duplicate thereof affixed to the certificate. In all legal proceedings the record and photograph so kept by the board of examiners, or certified copies thereof shall be *prima facie* evidence of the facts therein stated.

Sec. 4. Every person to whom a certificate of either registration or exemption shall be issued, shall immediately cause the same to be recorded in the clerk's office in the county of his residence, and also in the clerk's office of each other county wherein he shall then practice or thereafter commence the practice of optometry; every person practicing optometry must also display his certificate of registration or exemption in a conspicuous place in the principal office wherein he practices optometry, and, whenever required, exhibit such certificate to said board of examiners or its authorized representatives. And whenever practicing said profession of optometry outside of, or away from said office or place of business, he shall deliver to each customer or person so fitted with glasses, a bill of purchase which shall contain his signature, home postoffice address, and the number of his certificate of registration or exemption, together with a specification of the lenses furnished.

Sec. 5. The fee for such examination shall be fifteen dollars; for certificate of registration, ten dollars, and for certificate of exemption, five dollars. Such fees shall be paid into the state treas-

ury and the legislature shall appropriate therefrom an amount sufficient to pay all proper expenses incurred pursuant to this act. The fee to be paid to the county clerk for recording a certificate shall be fifty cents.

Sec. 6. Said board shall have the power to revoke any certificate granted by it under this act, for conviction of crime, habitual drunkenness, fraud, or deceit in his practice, or grossly incompetent to practice optometry; *provided, however*, that before any certificate shall be revoked the holder thereof shall have written notice of the charge or charges made against him, and the day specified in said notice at least five days after the service thereof, at which a public hearing is to be given, where the accused shall have an opportunity to produce testimony in his own behalf and to confront the witnesses against him. Three of the members of the board shall be a quorum to such hearing.

Sec. 7. No person not a holder of a certificate of registration or exemption duly issued to him and recorded as herein provided shall, six months after the passage of this act, practice optometry within this state. No person shall falsely personate a registered optometrist of a like or different name, nor buy, sell, or fraudulently obtain a certificate of registration or exemption issued to another practicing or offering to practice optometry, or the public representation of being qualified to practice the same by any person not authorized to practice optometry, shall be sufficient evidence of a violation of this article, and shall for each offense be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned not more than three months or both.

Sec. 8. Nothing in this act shall be construed to apply to physicians and surgeons authorized to practice under the laws of West Virginia, or to prohibit any established merchant or jeweler from keeping and offering for sale and selling spectacles or eye glasses to any person or persons wishing to purchase the same.

(House Bill No. 33.)

## CHAPTER 74.

AN ACT to amend and re-enact chapter eight of the acts of one thousand nine hundred and one, entitled, "An act making provisions for the protection of street car employees from the inclemencies of the weather."

(Passed February 11, 1909. In effect ninety days from passage. Approved by the Governor February 19, 1909.) \*

Sec.	1. Street railway companies to provide platforms of cars with sufficient enclosure to protect employees from exposure to inclement weather.		Sec.	2. Penalty for violation; when act shall not apply.
				3. Duty of prosecuting attorney.
				4. Inconsistent acts and parts of acts repealed.

*Be it enacted by the Legislature of West Virginia:*

That chapter eight of the acts of one thousand nine hundred and one, entitled, "An act making provisions for the protection of street car employees from the inclemencies of the weather," be amended and re-enacted so as to read as follows:

Sec. 1. From and after the first day of November, in the year of our Lord one thousand nine hundred and nine, it shall be unlawful for any person, partnership or corporation, owning or operating a street railway in this state, or for any officer or agent thereof having charge or control of the management of such line of railway, or the cars thereof, operating electric, cable or other cars propelled either by steam, cable or electricity, which requires the constant services, care or attention of any person or persons upon the platforms of any such car, to require or permit such services, attention or care, of any of its employees, or any other person or persons, unless such person, partnership or corporation, its officers or superintending or managing agents, have first provided the platforms of said cars with a proper and sufficient enclosure constructed of wood, iron, glass or similar suitable material, sufficient to protect such employees from exposure to the winds and inclemencies of the weather:

Sec. 2. And any person, partnership or corporation, owning, operating, superintending or managing any such line of street railway, or managing or superintending officer or agent thereof, who shall be found guilty of a violation of the provisions of this act, shall be found guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars. Each day that said person or persons, partnership or corporation, cause any of their said employees to operate such car or cars in violation of the aforesaid provisions of this act, or cause a car or cars to be used or operated in violation of this act, shall be deemed a separate offense; *provided*, that the provisions of this act shall not apply to cars used and known as trailing cars.

Sec. 3. It is hereby made the duty of the prosecuting attorney of the county in which any such street railway is situated and operated, upon information given him by any creditable person or persons, or upon knowledge that he may possess, that any person, partnership or corporation, has violated any of the provisions of this act, to promptly prosecute such person, members of such partnership or corporation, for such violation.

Sec. 4. All acts or parts of acts inconsistent with this act are hereby repealed.

(House Bill No. 333.)

## CHAPTER 75.

AN ACT accepting the donation from schools of West Virginia, for the purchase of the mound at Moundville, and appropriating an additional sum for the purchase thereof.

(Passed February 26, 1909. In effect ninety days from passage. Approved by the Governor March 3, 1909.)

<p>Sec. 1. Accepting donation of schools and appropriating money for purchase of mound at Moundville;</p>		<p>Sec. how paid; by whom controlled; supervision.</p>
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*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That the state hereby accepts this handsome donation from the pupils and teachers of our schools, and it is hereby directed that the money raised for the above named purpose, shall be turned into the state treasury, and that the balance needed for the purchase of the mound, which shall not exceed the sum of eighteen thousand, six hundred dollars, shall be paid in three annual installments upon requisitions properly drawn by the board of public works on the auditor of the state; *provided*, that the board of public works shall receive a proper conveyance to the state of the above named property with descriptive boundary thereof, and shall have full control of the same after the first payment thereon; *provided, second*, that the mound and the area surrounding it when so purchased, shall be hereafter under the control of the penitentiary board and under the immediate supervision of the warden thereof.

(Senate Bill No. 204.)

## CHAPTER 76.

AN ACT authorizing the governor to examine the title to the public property at Berkeley Springs.

(Passed February 25, 1909. In effect from passage. Approved by the Governor February 27, 1909.)

<p>Sec. 1. Governor authorized to inquire into matter of persons claiming title to part of land of Berkeley</p>		<p>Sec. Springs property; suit may be brought.</p>
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WHEREAS, The board of Berkeley Springs did on the thirteenth day of February, one thousand nine hundred and nine, declare the lease heretofore existing between the board of Berkeley Springs of the one part, and C. P. Jack and A. R. Unger, of the other part, forfeited, said lease being dated the first day of June, one thousand nine hundred and one, and

WHEREAS, It appears from evidence in the hands of the governor that there are certain persons who claim to have title to a part of said public property, and have encroached and built on said property without authority, therefore,

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That the governor be and is hereby authorized, through the attorney general, to fully inquire into the status of said public property at Berkeley Springs in the county of Morgan, to make a full abstract to the title of said property, to inquire into and trace the source of title the person or persons now encroaching on said state property have, or are alleged to have, and to have a survey made, and he is further authorized when in the opinion of the attorney general he has sufficient evidence so to do, to bring suit in ejectment, unlawful detainer or in any other manner that may be deemed proper by the attorney general, in the name of the state of West Virginia, to recover for the state the property so encroached upon and now held by the parties heretofore mentioned, or to take such other action as may be necessary to remove any cloud on the title of the state to said property.

And for the purpose of carrying out the provisions of this act, there is appropriated the sum of five thousand dollars, or as much

thereof as may be necessary, out of the moneys in the treasury not otherwise appropriated, to be expended on the order of the governor, who shall make report of his acts hereunder to the next session of the legislature.

(Senate Bill No. 59.)

## CHAPTER 77.

AN ACT to amend and re-enact section five hundred and four of chapter fifteen of the code of West Virginia, one thousand nine hundred and six, relating to legal holidays.

(Passed February 2, 1909. In effect from passage. Approved by the Governor February 3, 1909.)

Sec.

1. Days to be regarded as legal holidays; schools to hold appropriate ceremonies on Lincoln's birthday; when date falls on

Sec.

Sunday, succeeding Monday to be observed; return day of summons, etc.

*Be it enacted by the Legislature of West Virginia:*

That section five hundred and four of chapter fifteen of the code of one thousand nine hundred and six, be amended and re-enacted, so as to read as follows:

Sec. 1. That the following days be regarded, treated and observed as legal holidays, viz: The first day of January, commonly called New Year's day; the twenty-second day of February, commonly called Washington's birthday; the fourth day of July, commonly called independence day; the thirtieth day of May, commonly called memorial day; the twenty-fifth day of December, commonly called Christmas day; the first Monday in September commonly called labor day; the twelfth day of February, commonly called Lincoln's birthday; *provided, however,* that the common and graded schools of this state, the terms of which have not expired upon said last named day, shall remain in session and hold appropriate ceremonies in honor of Abraham Lincoln, unless his birthday fall upon Saturday or Sunday; any national or state election day, and all days that may be appointed or recommended by the governor of this state or the president of the United States as days of thanksgiving, or for the general cessation of business;

and when either of said days or dates falls on Sunday, then it shall be lawful to observe the succeeding Monday as such holiday; *provided*, that when the return day of any summons or other court proceedings or any notice or time fixed for holding any court or doing any official act shall fall on either of said holidays, the ensuing secular day shall be taken as meant and intended.

(Senate Bill No. 31.)

## CHAPTER 78.

AN ACT to prohibit sales of merchandise in bulk in fraud of creditors.

(Passed February 5, 1909. In effect ninety days from passage. Approved by the Governor February 15, 1909.)

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|---|--|---|--|
| <p>1. Prohibition of sales in bulk of merchandise under certain conditions; what shall be consid-</p> |  | <p>Sec.<br/>ered fraudulent transactions.</p> | <p>2. Sellers and purchasers included in this act; exceptions.</p> |
|---|--|---|--|

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. The sale in bulk of any part or the whole of a stock of merchandise otherwise than in the ordinary course of trade and in the regular and usual prosecution of the seller's business, shall be fraudulent and void as against the creditors of the seller, unless the seller and purchaser at least five days before the sale, make a written statement showing the nature and character of the sale and property to be sold and the price to be paid therefor, and unless the purchaser demands and receives from the seller a written list of names and addresses of creditors of the seller, with the amount of indebtedness due or owing to each and certified by the seller under oath, to be, to the best of his knowledge and belief, a full, accurate and complete list of his creditors and of his indebtedness; and unless the purchaser shall at least five days before taking possession of such merchandise or paying therefor, notify personally or by registered mail, every creditor whose name and address is stated in said list, of the proposed sale and of the price, terms and conditions thereof.

Sec. 2. Sellers and purchasers under this act shall include corporations, associations, co-partnerships and individuals, but noth-

ing contained in this act shall apply to sales by executors, administrators, receivers, assignees under a voluntary assignment for the benefit of creditors, trustees in bankruptcy or by any public officers under judicial process.

(Senate Bill No. 81.)

## CHAPTER 79.

AN ACT to provide for the publication and distribution of the West Virginia manual.

(Passed February 26, 1909. In effect ninety days from passage. Approved by the Governor February 27, 1909.)

<p>Sec. 1. Secretary of state required to prepare and distribute West Virginia manual; subject matter;</p>		<p>Sec. manner of distribution and to whom distributed.</p>
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*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That the secretary of state be and is hereby required biennially, as soon as it is practicable after the organization of the legislature, to prepare, publish and distribute not exceeding twelve thousand copies of the West Virginia manual, to contain official, political and other information, such as is found in the manual of one thousand nine hundred and seven. Said manual shall by him be distributed to the members of the legislature, state, judicial and county officers, to the newspapers of the state, the surplus of volumes remaining thereafter to be distributed throughout the state as he may deem best: *provided*, each member of the legislature shall be entitled to receive twenty volumes of said manual.

(House Bill No. 148.)

## CHAPTER 80.

AN ACT providing for the establishment and management of the West Virginia children's home.

(Passed February 26, 1909. In effect ninety days from passage. Became a law without the approval of the Governor.)



Sec. 1. State institution established; name; control of. 2. Site for; erection of; length of commitment. 3. State to hold title; approval of	Sec. 4. Governor. Rules and regulations; by whom made; appointment of officers, etc.; duties of; compensation.
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*Be it enacted by the Legislature of West Virginia:*

Sec. 1. A state institution to be called "The West Virginia Children's Home," is hereby established, and shall be carried on in a building or buildings suitable for the purpose, to be provided by the state at such locality as may be selected in accordance with this act. This institution shall be under the direction and control of the board of directors of the West Virginia humane society,

Sec. 2. The board of directors of the West Virginia humane society shall select such locality in this state as it shall deem best, as the site for the "West Virginia Children's Home," purchase or receive and take title for, by deed of gift, a suitable tract of land and cause to be erected thereon, such building or buildings as may be needed for the purpose of affording a temporary home to the white children, surrendered to the care or committed to the custody of the West Virginia humane society. Said board may there keep such children until they can be placed in suitable homes elsewhere.

Sec. 3. All tracts of land purchased or donated for the purpose set forth in section two of this act, shall be conveyed to the state of West Virginia, and before any money is paid therefor, the title to such land shall be passed upon by the attorney general, and the deed for such land shall be recorded in the county where said real estate is situated, filed in the office of the secretary of state and shall be recorded in the record book of the board of public works, and the selection and the purchase of such land shall be approved by the governor. The plans and specifications and the contract for the erection of said building or buildings shall also be approved by the governor.

Sec. 4. The said board shall make such rules and regulations relative to the management, government, instruction, discipline, employment and disposition of the children in the said home, not contrary to law, as said board may deem proper, and shall appoint such officers, agents and servants as it may deem necessary, to transact the business and carry on the operation of said home, and may designate their duties and fix their compensation.

(Senate Bill No. 112.)

**CHAPTER 81.**

AN ACT making appropriations of public money on account of the contingent expenses of the present session of the legislature.

(Passed February 1, 1909. In effect from passage. Approved by the Governor February 3, 1909.)

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|---|---|
| <p>Sec.<br/>1. Appropriation for contingent expenses senate and house of delegates.</p> | <p>Sec.<br/>2. Purchasing of supplies.<br/>3. Auditor authorized to issue warrants upon treasury.</p> |
|---|---|

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. There is hereby appropriated out of the public treasury the following sums of money, on account of the contingent expenses of the present session of the legislature:

For contingent expenses of the senate, one thousand five hundred dollars.

For contingent expenses of the house of delegates, two thousand dollars.

Sec. 2. No supplies shall be purchased for either house except by resolution, or upon an order signed by the president of the senate and the clerk thereof, or by the speaker of the house and the clerk thereof.

Sec. 3. The auditor is hereby authorized and directed to issue his warrants upon the treasury for such amounts as may, by resolution of either house, be directed to be paid.

(House Bill No. 133.)

**CHAPTER 82.**

AN ACT making appropriations of public money to pay the per diem and mileage of the members of the legislature for the regular session of one thousand nine hundred and nine, and for salaries of the officers and attaches thereof.

(Passed January 22, 1909. In effect from passage. Approved by the Governor January 26, 1909.)

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|---|--|
| <p>Sec.<br/>1. Legislative contingent expenses.</p> | <p>Sec.<br/>2. Authorizing auditor to issue warrants</p> |
|---|--|

*Be it enacted by the Legislature of West Virginia:*

There shall be, and are, hereby appropriated out of the public treasury, for the payment of the mileage and per diem of the members of the legislature for the session of nineteen hundred and nine, and the per diem of the officers and attaches thereof, the following sums of money:

*Senate.*

Sec. 1. To pay the per diem of members, five thousand four hundred and ninety dollars (\$5,490.00);

To pay the mileage of members, one thousand one hundred and twenty-five dollars and thirty cents (\$1,125.30);

To pay the per diem of the chief clerk, five hundred and fifty dollars (\$550.00);

To pay the per diem of the sergeant-at-arms, two hundred and twenty-five dollars (\$225.00);

To pay the per diem of doorkeeper, one hundred and eighty dollars (\$180.00);

To pay the per diem of the secretary to the president, stenographers and assistant clerks, ten thousand five hundred and thirty dollars (\$10,530.00);

To pay the per diem of committee clerks, including the clerks and assistant clerks of the judiciary and the finance committees at six dollars per day, four thousand one hundred and forty dollars (\$4,140.00);

To pay the per diem of eleven pages, including mailing and banking page and journal page, at three dollars per day, one thousand and eighty dollars (\$1,080.00);

To pay the per diem of the assistant sergeant-at-arms, two hundred and twenty-five dollars (\$225.00);

To pay the per diem of the assistant doorkeeper, one hundred and eighty dollars (\$180.00);

To pay the per diem of the assistant gallery doorkeeper, one hundred and thirty-five dollars (\$135.00);

To pay the per diem of the librarian, one hundred and eighty dollars (\$180.00);

To pay the per diem of the day watchman, one hundred and eighty dollars (\$180.00);

To pay the per diem of the night watchman, one hundred and eighty dollars (\$180.00);

To pay the per diem of two cloak-room keepers, two hundred and seventy dollars (\$270.00);

*House of Delegates.*

To the per diem of members, fifteen thousand five hundred and seventy dollars (\$15,570.00);

To pay the mileage of members, three thousand six hundred dollars (\$3,600.00);

To pay the per diem of the chief clerk, five hundred and fifty dollars (\$550.00);

To pay the per diem of the sergeant-at-arms, two hundred and twenty-five dollars (\$225.00);

To pay the per diem of doorkeeper, one hundred and eighty dollars (\$180.00);

To pay the per diem of the secretary to the speaker, stenographers and assistant clerks, eight thousand one hundred dollars (\$8,100.00);

To pay the per diem of members, fifteen thousand five hundred

To pay the per diem of committee clerks, including the clerks of judiciary and taxation and finance at six dollars per day, three thousand seven hundred and eighty dollars (\$3,780.00);

To pay the per diem of sixteen pages, including mailing and banking page and four journal pages at three dollars per day, one thousand seven hundred and fifty-five dollars (\$1,755.00);

To pay the per diem of the assistant sergeant-at-arms, two hundred and twenty-five dollars (\$225.00);

To pay the per diem of two assistant doorkeepers, three hundred and sixty dollars (\$360.00);

To pay the per diem of gallery doorkeeper, one hundred and thirty-five dollars (\$135.00);

To pay the per diem of two cloak-room keepers, two hundred and seventy dollars (\$270.00);

To pay the per diem of librarian, one hundred and eighty dollars (\$180.00);

To pay the per diem of day watchman, one hundred and eighty dollars (\$180.00);

To pay the per diem of night watchman, one hundred and eighty dollars (\$180.00);

Sec. 2. The auditor is hereby authorized and directed to issue his warrants upon the treasury for such amounts as are or may become due to the several members, officers and attaches of the senate and house of delegates upon the proper requisition of the clerk of the senate and the sergeant-at-arms of the house of delegates, respectively.

(Senate Bill No. 216.)

**CHAPTER 83.**

AN ACT making appropriations of public money for salaries of the officers of the government, in pursuance of the forty-second section of the sixth article of the constitution.

(Passed February 26, 1909. In effect from passage. Approved by the Governor March 1, 1909.)

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|---|---|
| <p>Sec.</p> <p>1. Appropriations to pay salaries of executive and judicial departments, etc.</p> <p>2. Appropriations for increasing compensation of employees of state</p> | <p>Sec.</p> <p>3. Auditor directed to issue warrants in effect March 1st. upon the treasury; provisions for 1910.</p> |
|---|---|

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. There shall be, and are, hereby appropriated, for the fiscal years ending September thirtieth, nineteen hundred and nine, and September thirtieth, nineteen hundred and ten, respectively, the following sums of money, to pay the salaries of the officers of the government:

*Executive Department.*

	1909	1910
To pay the salary of the governor.....	\$5,000	\$5,000
To pay the salary of the auditor.....	4,500	4,500
To pay the salary of the treasurer.....	2,500	2,500
To pay the salary of the attorney general.....	4,000	4,000
To pay the salary of the superintendent of free schools .....	3,000	3,000
To pay the salary of the secretary of state.....	4,000	4,000
To pay the salary of the adjutant general and <i>ex-officio</i> superintendent of weights and measures	3,600	3,600

	1909	1910
To pay the state librarian.....	1,200	1,200
To pay the salary of the tax commissioner.....	4,000	4,000

*Judicial Department.*

To pay the salaries of the judges of the supreme court .....	\$27,500	\$27,500
To pay the salaries of the judges of the circuit courts .....	66,000	66,000

*Keeper of Rolls.*

To pay the salary of the keeper of rolls.....	\$ 300	\$ 300
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*Janitors.*

To pay the salary of the janitor.....	\$1,500	\$1,500
To pay J. M. Lynn, janitor.....	135	
To pay the per diem of eight janitors.....	360	

*Commissioner of Banking*

For salary of commissioner of banking.....	\$2,500	\$2,500
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*State Highway Inspector.*

Salary for inspector for month of March, one thousand nine hundred and nine.....	\$ 166.67	
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*Department of Mines.*

Salary of chief.....	\$2,400	\$2,400
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*Bureau of Labor.*

For salary of commissioner of labor.....	\$1,200	\$1,200
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*Forestry, Game and Fish Warden.*

Salary of warden .....	\$1,166.66	\$1,800
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*Office of Public Roads.*

Salary commissioner public roads.....	\$ 750	\$3,000
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*Board of Control.*

For salaries of members of board.....\$3,750 \$15,000

*State Board of Regents.*

Salary of four members.....\$1,000 \$4,000

Sec. 2. The appropriations herein provided for increasing the compensation of the employees of the state shall be in full force and effect on and after March first, one thousand nine hundred and nine, and only so much thereof as to said increase shall be and as may be necessary.

Sec. 3. The auditor is hereby authorized and directed, when properly demanded, to issue his warrant upon the treasury in the same manner as he would be required to if each item of the expenditure were directed to be paid to a creditor by name, and no money shall be drawn from the treasury for the purpose herein named during the fiscal years one thousand nine hundred and nine, and one thousand nine hundred and ten respectively, beyond the amount hereby appropriated, unless the same is authorized by constitution or some general law.

But the auditor may draw his warrant upon the treasury in favor of the several officers whose salaries and compensations are provided for by this act, for the services actually rendered by them during the first six months of the fiscal year beginning on the first day of October, one thousand nine hundred and ten, for an amount not exceeding in the aggregate one half the sum appropriated for the salary or compensation of such officers, respectively, for the year ending September thirtieth, one thousand nine hundred and nine.

(House Bill No. 342.)

**CHAPTER 84.**

AN ACT making appropriations of public money to pay general charges upon the treasury.

(Passed February 26, 1909. In effect from passage. Approved by the Governor March 3, 1909.)

- Sec.
1. Appropriations to pay general charges upon the Treasury for fiscal years ending September 30, 1909, and September 30, 1910.
  2. Criminal charges.
  3. Lunatics in jail.
  4. For support of state normal school and branches.
  5. Marshall college.
  6. Fairmont normal school.
  7. Concord normal school.
  8. Shepherd college.
  9. Glenville normal school.
  10. West Liberty normal school.
  11. West Virginia school for the deaf and blind.
  12. University.
  13. Preparatory branch of the West Virginia university at Keyser.
  14. Preparatory branch of the West Virginia university at Montgomery.
  15. West Virginia colored institute.
  16. Bluefield colored institute.
  17. Storer college.
  18. West Virginia reform school.
  19. West Virginia industrial home for girls.
  20. West Virginia asylum.
  21. Weston hospital for the insane.
  22. Second hospital for the insane.
  23. Miners' hospital No. 1.
  24. Miners' hospital No. 2.
  25. Miners' hospital No. 3.
  26. Kings' daughters hospital.
  27. State board of agriculture.
  28. San Jose scale.
  29. Horticulture and floriculture.
  30. Commissioner of banking.
  31. State highway inspector.
  32. Department of mines.
  33. State board of health.
  34. Commissioners of pharmacy.
  35. Bureau of labor.
  36. Vaccine agents.
  37. Institute instructors.
  38. Uniform examinations.
  39. Erroneous assessments.
  40. Emergency fund.
  41. State law library.
  42. Erroneous payments into the treasury.
  43. Distribution of general school fund.
  44. For refunding county, district and municipal taxes.

- Sec.
15. Overpaid taxes.
  46. Delinquent taxes.
  47. Supplementary school fund.
  48. Forestry, game and fish.
  49. Berkeley Springs' board.
  50. West Virginia humane society.
  51. State geological and economic survey.
  52. The militia.
  53. Department of archives and history.
  54. Printing, binding and stationery.
  55. Reprinting supreme court reports.
  56. Capitol building and grounds.
  57. Governor's mansion and grounds.
  58. Governor's office.
  59. Clerks' and contingent expense, judicial department.
  60. Insurance on public buildings.
  61. Labor fund for capitol buildings.
  62. The Rumseyan Society, Inc.
  63. Contingent legislative expenses.
  64. Attorney general's office.
  65. Salaries of clerks.
  66. Contingent and executive department.
  67. State tax commissioner.
  68. Colored orphans' home and industrial school.
  69. Ft. Pleasant battle monument.
  70. Office of public roads.
  71. For pay of state agents.
  72. State board of regents.
  73. Board of control.
  74. Virginia debt.
  75. Miscellaneous.
  76. When fiscal years begin and end.
  77. How appropriations of public institutions drawn.
  78. Allowance to regents and directors.
  79. All officers, employees, head of a department, or of an institution, or board, to make report to the Governor as to clerk hire; when such report to be made.
  80. Printing, etc., for the free school department and for certain boards, officers or institutions: how paid for.
  81. No moneys paid beyond appropriations, unless, etc.; what payments may be made after expiration of fiscal year ending September 30, 1910.
  82. Duties of clerks of house and senate upon the adjournment of the legislature.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. There shall be and are hereby appropriated out of the state funds for the fiscal year ending September thirtieth, one thousand nine hundred and nine, and September thirtieth, one thousand nine hundred and ten, respectively, the following sums for the purposes as follows:

*Criminal Charges.*

	1909	1910
Sec. 2. For criminal charges .....	\$60,000	\$60,000



	1909	1910
For extradition of criminals .....	2,500	2,500

*Lunatics in Jail.*

Sec. 3. For support of lunatics in jail.....	\$2,500	\$ 2,500
Sec. 4. For the support of the state normal school and its branches, to be paid according to the provisions of sections ninety-six and ninety- seven of chapter forty-five of the code, as amended by the acts of the legislature of one thousand eight hundred and ninety-nine....	65,400	65,400
For traveling expenses of the board of regents....	1,000	
For salary of secretary .....	225	
For the education and normal training of colored teachers to be paid according to the provisions of section ninety-six of chapter forty-five of the code .....	2,000	2,500

*Marshall College.*

Sec. 5. Contingent and printing.....	\$ 1,500	\$ 1,500
Janitors .....	1,300	1,300
Fuel, light and water .....	1,700	1,700
Repairs .....	750	750
Books, periodicals, maps, etc.....	1,250	1,250
Tables and chairs for library .....	100	100
Apparatus for department of physics, chemistry and biology .....	1,000	1,000
Dormitory furniture .....	450	450
Furniture for school room .....	350	350
Overhauling rooms in dormitory .....	200	100
Putting transoms over doors of thirty-five rooms in section one of dormitory .....	140	
Repairing laundry .....	50	50
Chandeliers in hallways and rooms .....	150	150
Slating three sides of room number forty.....	85	
Six acres of land on Fifth avenue; <i>provided</i> the principal of the institution raise the remainder necessary to purchase the same.....		20,000
Night watchman .....	600	600
Installing closets for young men .....	300	235

	1909	1910
Installing electric lights around school buildings..	400	
Gymnasium equipment .....	100	100
Plastering gymnasium ceiling .....		100
Painting walls, ceiling and wood work of commencement hall .....	150	150
Changing heat pipe of basement floor of dormitory.	100	100
Moving furnaces outside buildings .....	100	100
Painting wood work .....		250

*Fairmont Normal School.*

Sec. 6. Contingent and printing .....	\$ 1,500	\$ 1,500
Closets .....	50	50
Water .....	300	300
Janitor .....	1,000	1,000
Gymnasium .....	300	300
Furniture .....		500
Piano .....		300
Repairs .....	1,000	1,000
Fuel and light .....	1,500	1,500
Library and apparatus .....	500	500
Sewer and plumbing .....	300	300

*Concord Normal School.*

Sec. 7. To installing system of fire protection and closets in main building of dormitories .....	\$ 1,750	\$ 1,750
Library .....	500	500
Fuel and light .....	1,200	1,200
Contingent fund and printing.....	900	900
Furniture .....		500
Janitor .....	600	600
Repairs .....	500	500
Painting dormitory .....	300	
Piano .....		300
Painting brick walls of school building and wood work of same in and out.....		750
Typewriter .....	100	
Fitting up principal's office .....	200	

	1909	1910
<i>Shepherd College.</i>		
Sec. 8. Repairs .....	\$ 300	\$ 300
Contingent expenses .....	750	750
Janitor .....	600	600
Fuel and lights .....	1,200	1,200
Library and apparatus .....	600	600
Library shelving .....		400
Purchase and grading of additional ground.....	3,000	3,000
Water system, toilets and plumbing .....	500	500
Addition to heating system .....	1,500	
Piano .....		300
<i>Glenville Normal School.</i>		
Sec. 9. Contingent expense .....	\$ 600	\$ 600
Repairs .....	300	300
Library and apparatus .....	500	500
Janitor .....	720	720
Fuel, light and water .....	800	800
Furniture and gymnasium .....	350	350
New building, including heating and lighting apparatus, the plans and specifications for the building to be approved by the board of control, as, also, the contracts for erecting the same when let .....	17,500	17,500
<i>West Liberty Normal School</i>		
Sec. 10. Contingent .....	\$ 800	\$ 800
Janitor .....	600	600
Repairs to building .....	600	
Fuel and light .....	550	550
Furniture .....	200	200
Gymnasium .....	100	100
Library and apparatus .....	500	500
Grading and paving .....	300	300
<i>West Virginia School for the Deaf and Blind.</i>		
Sec. 11. Current expenses .....	\$45,000	\$45,000
For colored pupils .....	1,000	1,000
Traveling expense fund .....	2,500	2,500
Contingent expenses .....	600	600

	1909	1910
Books and musical instruments .....	500	500
Repairs and improvements .....	2,515	3,000
Shops .....	250	500

*University.*

Sec. 12. For salaries of teachers.....	\$67,500	\$67,500
For college of agriculture .....	6,000	6,000
For engineering equipment and supplies .....	7,500	7,500
For school of music .....	4,000	4,000
For college of medicine .....	4,000	4,000
For university library .....	2,500	2,500
For cadet books, supplies and uniforms .....	5,000	5,000
For law library .....	2,000	2,000
For advertising and printing .....	4,000	4,000
For apparatus, furniture, blackboards, desks, etc. .	3,000	3,000
For repairs .....	4,000	4,000
For current and contingent fund .....	4,500	4,500
For school of fine arts .....	1,500	1,500
For regents' expense .....	900	
For fire protection .....	200	200
For janitors, watchmen and gardeners .....	6,000	6,000
For gymnasium .....	1,000	1,000
For grounds, roads and pavements .....	2,000	2,000
For heat, light and water .....	6,000	6,000
For new buildings or betterments at option of and subject to approval of the board of control ...	30,000	30,000

*Preparatory Branch of the West Virginia University at Keyser.*

Sec. 13. For grading walks, lighting walks, im- <b>proving and grading athletic field and plant-</b> ing trees and shrubbery .....	\$ 500	\$ 1,000
For chemical and physical laboratories .....	200	200
For piano for auditorium .....		400
For library and reading room .....	600	600
For janitor and assistant .....	720	720
For contingent expense .....	750	750
For fuel and light .....	750	750
For salary secretary and treasurer and per diem and expenses board of regents .....	375	

	1909	1910
For repairs to building .....	500	1,500
For salaries of teachers .....	7,500	7,500
For gymnasium .....	250	250

*Preparatory Branch of the West Virginia University at Montgomery.*

Sec. 14. Contingent expense.....	\$ 300	\$ 300
Janitor .....	600	600
Board of regents .....	225	
For repairs and refitting, including plastering ....	1,500	1,500
For library and apparatus .....	500	500
For fuel, water and light and telephone .....	1,200	1,200
For furniture and fixtures .....	500	500
For teachers salaries .....	5,600	5,600

*West Virginia Colored Institute.*

Sec. 15. Current expense .....	\$1,500	\$ 1,500
Board of regents .....	500	
For salaries of janitor .....	600	600
For fuel .....	2,500	2,500
Deficit in fuel fund .....	1,100	
For school and dormitory furniture .....	500	
For teachers' salaries .....	15,000	15,000
For walks and grading .....	500	500
For engineer's salary .....	600	600
For repairs to building .....	1,000	1,500
For kitchen equipment .....	150	150
For night watchman .....	400	400
For agricultural, domestic science, printing and mechanical department, cadet books and uniforms and library and reading .....	2,000	2,000
Carpets and rugs .....	250	250
For finishing and furnishing girls' domestic science building .....	1,000	1,000
For repairs to fences .....	100	100
For handmaster .....	250	250
For student labor .....	600	600
For electric lights and fixtures .....	300	300
For water supply and fixtures .....	1,500	1,000

	1909	1910
<i>Bluefield Colored Institute.</i>		
Sec. 16. Repairs to buildings, plumbings, etc....\$	600.	600
Teachers' fund .....	2,000	5,000
Janitor fund .....	200	500
Fuel, lights and water.....	1,000.	1,200
Engineer .....	300	400
Expense board of regents .....	100	
Contingent expense .....	500	800
Fruit culture and gardening .....	300	300
Library and chemical apparatus .....	250	250
Repairs to furnishings fund .....	100	100
Repairing heating apparatus .....		300
Fire protection .....	750	750

*Storer College.*

Sec. 17. For salaries of teachers.....\$	1,500	\$ 1,500
For industrial department .....	1,000	1,000

*West Virginia Reform School.*

Sec. 18. For current expenses.....\$	32,000	\$32,000
For officers salaries .....	18,000	18,000
For expense board of directors .....	500	
For transportation of inmates .....	1,500	1,500
For contingent expenses .....	750	750
For library and school furniture .....	250	250
For closets, carpentry, blacksmith shop equipment, furniture and general repairs .....	2,500	2,500
For farm, to be expended under the direction of the board of control.....	10,000	20,000

*West Virginia Industrial Home for Girls.*

Sec. 19. For current expenses.....\$	14,000	\$16,000
For farm .....	1,000	1,000
For transportation of inmates .....	500	500
For board of directors expenses .....	250	

*West Virginia Asylum.*

Sec. 20. For current expense and drugs.....\$	62,000	\$62,000
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	1909	1910
For painting and repairs.....	1,500	1,500
For repairs to boiler in laundry .....	850	
For building for male patients .....		50,000
For furnishings .....	1,500	1,500
For roads and walks .....	500	500
For window guards .....	200	200
For transportation .....	200	700
For tunnel and steam pipe .....		3,327.50
For additional land .....	1,250	

*Weston Hospital for the Insane.*

Sec. 21. For current expenses, including salaries and drugs .....	150,000	150,000
For transportation of patients .....	2,000	2,000
For painting and repairs .....	8,000	8,000
For cleaning, recasing old gas well .....	2,500	
For repairing old and building new sidewalks .....	3,000	
For purchasing new carpets and furniture .....	2,500	2,500
For amusement and religious services .....	250	250
For purchasing fancy articles for female patients..	100	100

*Second Hospital for the Insane.*

Sec. 22. For current expenses, including fuel, drugs and salaries .....	\$80,000	\$80,000
For general repairs, plumbing, heating, etc.....	7,500	7,500
For farm fund .....	1,000	1,000
For transportation fund .....	1,500	1,500
For furnishing fund for ward, etc.....	1,500	1,500
For fitting "E" ward .....	3,500	
For repairing reservoir, sinking new wells, com- pleting water supply .....	1,250	1,250
For building new barn .....	1,500	1,500

*Miners' Hospital No. 1.*

Sec. 23. For maintenance.....	\$30,000	\$30,000
For depreciation in ward supplies .....	1,500	1,500
For twenty-five new beds complete .....	500	
For fifty bedside tables .....	300	
For repairs to furniture on hand .....	500	

	1909	1910
For new power house, barn, laundry, storage and ice plant .....	4,000	4,000
For surgical instruments and sterilizers for bedding	1,500	

*Miners' Hospital No. 2.*

Sec. 24. For maintenance and improvements.....21,500 \$21,500

*Miners' Hospital No. 3.*

Sec. 25. For maintenance, including salaries....\$17,000 \$17,000  
 For electric light and storage plant ..... 1,000 3,000  
 For furniture, bedding, etc..... 500

*Kings Daughters Hospital.*

Sec. 26. Kings Daughters' hospital for the treatment and care of laborers and any others who may become a public charge, said amount to be paid upon the approval of the board of health of Berkeley county, as may be prescribed by the state board of health.....\$ 5,000

*State Board of Agriculture.*

Sec. 27. For total expenses, including salaries of officers, out of which shall be paid the salary of two thousand dollars per annum for the secretary .....\$12,500 \$12,500  
 For carrying into effect the provisions of chapter nine acts of 1897, for the control of diseased animals, including the inspection of dairies and breeding herds: ..... 5,000 5,000

*San Jose Scale.*

Sec. 28. For carrying out the provisions of chapter thirty-three of the acts of 1901, as amended by chapter forty-five of the acts of 1903.....\$ 6,000 \$6,000

*Horticulture and Floriculture.*

Sec. 29. For promoting the horticultural and trucking industry, under the direction of the director of experiment station.....\$ 4,000 \$ 4,000



1909 1910

*Commissioner of Banking.*

Sec. 30. For traveling expenses for commissioner of banking and assistant .....	\$ 1,200	\$ 1,200
For contingent expenses .....	900	900
For salary of assistant commissioner of banking ..	1,800	1,800
For salary of stenographer .....	900	900

*State Highway Inspector.*

Sec. 31. For salary of stenographer and other office help .....	\$ 75	
Publication and circulation of road bulletins.....	400	
Contingent expenses .....	100	

*Department of Mines.*

Sec. 32. Salaries of twelve inspectors at \$150 per month .....	\$21,600	\$21,600
Traveling expenses of chief and 12 mine inspectors	6,800	6,800
Contingent expenses and distribution of reports ..	1,000	1,000
Stenographer and clerk hire .....	2,600	2,600
Examination of oils .....	500	500

*State Board of Health.*

Sec. 33. For expenses state board of health.....	\$ 2,500	\$ 2,500
For contingent expenses .....	200	200

*Commissioners of Pharmacy.*

Sec. 34. For deficit secretary's salary, traveling expenses and per diem and traveling expenses for members .....	\$ 825	
For salaries .....	500	500
For secretary's salary .....	400	400
For secretary's traveling expenses .....	50	50
For per diem and traveling expenses, four members	600	600
For holding examinations and sundry expenses..	300	300
For inspecting stores of state .....	500	500

*Bureau of Labor.*

Sec. 35. For salaries of clerks and contingent expenses .....	\$ 1,200	\$ 1,200
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	1909	1910
<i>Vaccine Agents.</i>		
Sec. 36. For salary of vaccine agents to be paid on order of the governor .....	\$ 150	\$ 150
For purchasing of vaccine matter .....	150	150

*Institute Instructors.*

Sec. 37. For compensation of institute instructors, provided for in section thirty of chapter twenty-five of the acts of 1903, to be paid out of the general school fund.....	\$ 6,000	\$ 6,000
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*Uniform Examinations.*

Sec. 38. For expenses provided for in section three of chapter twenty-seven of the acts of 1903, to be paid out of the general school fund.....	\$ 6,000	\$ 6,000
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*Erroneous Assessments.*

Sec. 39. For refunding taxes assessed, collected and paid into the treasury, to be paid out of the funds into which the taxes were paid, such amount as may be necessary for such purpose.

*Emergency Fund.*

Sec. 40. For state emergency fund.....\$10,000 \$10,000  
No part of this fund shall be expended except on the unanimous vote of all the members of the board of public works.

*For State Law Library.*

Sec. 41. For purchasing and binding books for the state law library .....

	\$ 2,500	\$ 2,500
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To be drawn on the order of the supreme court of appeals and expended under the direction of said court; and all books furnished or purchased by this appropriation shall be the property of the state.

*Erroneous Payments into the Treasury.*

Sec. 42. For refunding moneys erroneously paid into the treasury, such sum is hereby appropriated as may be erroneously so paid, payable out of the same fund into which paid.

1909 1910

*For the Distribution of General School Fund.*

Sec. 43. For the distribution of the general school fund such amount is hereby appropriated as may be duly apportioned by the state superintendent of free schools to each county, payable out of the general school fund.

For the payment of the county superintendents of schools, to be paid out of the general school fund, according to the provisions of section 53 of chapter 45 of the code.....\$43,000 \$43,000

*For Refunding County, District and Municipal Taxes.*

Sec. 44. For refunding to counties, districts and municipal corporations, county, district and municipal taxes paid into the treasury for redemption of lands, such amount is hereby appropriated as will be necessary to refund to the counties, districts and municipal corporations entitled thereto, the taxes so paid into the treasury.

For refunding county, district and municipal taxes paid into the treasury by railroad and other companies, such sum is hereby appropriated as will be necessary to refund to each county, district and municipal corporation the amount of such taxes as may be paid into the treasury to the credit of such county, district or municipal corporation.

*Overpaid Taxes.*

Sec. 45. For refunding over payment made at the treasury on the account of taxes, licenses, fines and commissions, to be paid out of the fund into which they were paid, such amount as may be necessary for such purpose.

*Delinquent Taxes.*

Sec. 46. The Auditor shall credit all delinquent taxes due the state to the fund to which they belong, and the cost of certification and publication of sale shall be paid out of the fund to which they are credited, and so much as may be necessary is hereby appropriated for the payment of the same.

*Supplementary School Fund.*

Sec. 47. For supplementary aid for teachers fund.\$10,000 \$75,000

	1909	1910
For supplementary aid for building fund.....		15,000
To be paid out of general school fund.		

*Forestry, Game and Fish.*

Sec. 48. For mileage of warden.....\$	500	\$ 500
For postage and printing .....	500	1,000
For incidental expenses .....	500	500
For two chief deputy wardens.....	450	1,800
For mileage of deputy wardens.....	400	800
For postage and incidentals for deputy wardens..	300	500

*Berkeley Springs Board.*

Sec. 49. For contingent expense .....	\$ 250	\$ 250
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*West Virginia Humane Society.*

Sec. 50. For current expenses .....	\$10,000	\$10,000
For site and building, at the option of and subject to the approval of the board of control .....	10,000	10,000

*State Geological and Economic Survey.*

Sec. 51. For co-operation with the U. S. G. S. in topographic mapping .....	\$12,000	\$12,000
For publication and preparation of two detailed county reports each year .....	5,000	5,000
For field and other expenses, including chemicals, apparatus, etc. ....	2,500	2,500
For salaries geologic staff .....	10,400	10,400
For preparation and publication of volume five re- port on forests, plants .....		5,000

*The Militia.*

Sec.52. To carry into effect the provisions of chapter 61 of the acts of 1897 as amended by the acts of 1905, as amended by acts of 1909, relating to the militia .....	\$55,000	\$55,000
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Which amount shall cover all expenditures for the militia for each of the fiscal years, including the sum of ten thousand dollars for purchasing and equipping a rifle range, the same to be repaid out of the funds of the United States, when available, in accord-

1909 1910  
 ance with section 1661 R. S. *provided*, that the sum shall be disbursed according to the provisions of the military code.

*Department of Archives and History.*

Sec. 53. For salary of state historian and archivist, stenographer, purchase of books and records, binding books, erecting shelves, and incidental expenses .....\$ 9,000 \$ 9,000

*Printing, Binding and Stationery.*

Sec. 54. For public printing, binding and stationery, including militia .....\$42,500 \$32,500

For printing, binding and stationery for the office of the state superintendent of free schools, to be paid out of the general school fund .....\$ 9,000 \$ 9,000

*Reprinting Supreme Court Reports.*

Sec. 55. For reprinting supreme court reports, to be designated by the board of public works. The board of public works shall let the contract by competitive bid .....\$ 5,000 \$ 5,000

*Capitol Building and Grounds.*

Sec. 56. For water, light, heat, repairs and contingencies, to be expended on order of board of public works .....\$10,000 \$10,000

For improvements in vault in auditor's office. .... 8,000

For improvement third floor state house ..... 8,000

For cement walks around capitol ..... 7,000

*Governor's Mansion and Grounds.*

Sec. 57. For repairs, betterments, additions, furniture, furnishings, fencings .....\$ 5,000

For maintenance, to be expended on order of the governor ..... 1,250 1,250

For the purchase of Calderwood Bros. property to be paid on order of the governor who is hereby authorized upon the approval of title by attorney general to purchase said property under

	1909	1910
the option now in his possession .....	8,000	5,300
For purchase of Burdett property adjoining the governor's mansion lot to be paid on order of the governor, who is hereby authorized upon approval of title by attorney general to purchase said property under the option now in his possession .....	18,482	10,600

*Governor's Office.*

Sec. 58. For civil contingent fund .....	\$10,000	\$10,000
For salary of private secretary .....	4,000	4,000
For stenographers and clerks .....	2,500	2,500
For pardon attorney .....	3,000	3,000
For stenographer for pardon attorney .....	900	900
For contingent expenses pardon attorney's office..	250	250
Above to be all expended upon order of the governor.		

*Clerks and Contingent Expense Judicial Department.*

Sec. 59. To pay the compensation of special judges of circuit courts .....	\$ 2,000	\$ 2,000
To pay mileage of the judges of the supreme court.	1,600	1,600
To pay mileage of the judges of the circuit courts.	3,500	3,500
To pay the salary of the clerk of the supreme court.	1,500	1,500
For contingent expenses of supreme court of appeals to be expended upon the order of the court .....	1,500	1,500
For law clerks or stenographers of judges of the supreme court of appeals to be paid to said law clerks or stenographers on the order of their respective judges of said court .....	6,000	6,000
For printing, binding supreme court reports under supervision of the attorney general .....	5,000	5,000
To pay criers and messengers of the supreme court.	1,500	1,500
For stenographer and typewriter for clerk of supreme court .....	1,200	1,200

*Insurance on Public Buildings.*

Sec. 60. For insurance on public buildings to be expended on order of board of control .....	\$ 7,500	\$10,000
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	1909	1910
<i>Labor Fund for Capitol Buildings.</i>		
Sec. 61. For one day engineer .....	\$ 1,350	\$ 1,350
For one night engineer .....	990	990
For two night watchmen .....	1,980	1,980
For one night fireman .....	980	980
For one day fireman .....	980	980
For nine sweepers at \$810 each .....	7,290	7,290
For one messenger .....	810	810
For two charwomen at \$430 each .....	860	860
For three elevator boys at \$360 each.....	1,080	1,080
All to be expended upon order of the governor.		

*The Rumseyan Society, Inc.*

Sec. 62. To aid in erecting a suitable monument to the memory of James Rumsey, the inventor of the steam boat.....	\$ 2,500	\$ 2,500
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*Contingent Legislative Expenses.*

Sec. 63. For contingent expenses of the senate...	\$10,000	
For contingent expenses of the house of delegates .....		10,000

*Attorney General's Office.*

Sec. 64. For salary of two assistant attorneys general .....	5,000	5,000
For salary of the stenographer for the attorney general .....	1,200.	1,200
For salary of the printing clerk of the attorney general, which clerk shall have at least two years' experience as a practical printer.....	1,200	1,200
For other clerk hire, purchase of books, library, office fixtures, and all other contingent expenses of the attorney general's office.....	5,900	5,900

*Salaries of Clerks.*

Sec. 65. For salary of chief clerk of secretary of state .....	\$ 2,000	\$2,000
For other clerks in the office of secretary of state..	8,400	8,400

	1909	1910
For salary of stenographer secretary of state's office .....	1,200	1,200
For salary of chief clerk in treasurer's office.....	1,800	1,800
For salary of assistant clerk in treasurer's office.	1,500	1,500
For salaries stenographer and other clerk hire in treasurer's office .....	1,200	1,200
For salary of chief clerk in auditor's office.....	2,000	2,000
For salary of stenographer of auditor .....	1,200	1,200
For salaries of other clerks in the auditor's office..	18,000	18,000
For publishing delinquent corporations.....	200	200
For the auditor of the state there is hereby appropriated so much as may be necessary to pay the additional expenses of his office occasioned by the extra work made necessary by the acts of the legislature upon the subject of insurance, not to exceed the sum of.....	6,500	7,500
For the salary of chief clerk in the office of state superintendent of free schools, to be paid out of the general school fund.....	1,800	1,800
For salaries of other clerks in the office of state superintendent of free schools, to be paid out of the general school fund ;.....	5,000	5,000
For the salary of stenographer of state superintendent of free schools to be paid out of the general school fund .....	900	900
For the per diem and paying the expense of the state board of education to be paid out of the general school fund .....	1,000	1,000
For salaries of assistant clerks of the supreme court of appeals .....	2,800	2,800

*Contingent and Executive Department.*

Sec. 66. For contingent expenses of the auditor's office .....	\$ 2,500	\$ 2,500
For contingent expenses of the treasurer's office..	700	700
For contingent expenses of the superintendent of free schools to be paid out of the general school fund .....	2,500	2,500



	1909	1910
For the purchase of books for the state superintendent of free schools to be paid out of the general school fund .....	150	150
For expenses to be incurred under the provisions of article twelve, section two of the constitution .....	500	500
Or so much thereof, as may be necessary to be paid out of the general school fund.		
For contingent expenses of secretary of state's office including mailing state manual .....	2,500	2,500
For contingent expenses of the adjutant general's office, to be paid out of the appropriation for the militia .....	1,000	1,000
For contingent expenses and clerk hire of state librarian's office .....	1,200	1,200
For the distribution of the acts and journals to the members of the legislature, to be paid upon the order of the secretary of state.....	500	
To pay assistant superintendent of public printing for reading biennial reports during legislature of 1911 to be paid on the order of the secretary of state .....	500	

*State Tax Commissioner.*

Sec. 67. For expense of tax commissioner's office including compensation of assistants, clerks, stenographers, and all other expenses.....	\$20,000	\$20,000
For expense of uniform system of public accounting .....	8,000	8,000

*Colored Orphan's Home and Industrial School.*

Sec. 68. For salaries of teachers .....	\$3,000	\$ 3,000.
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*Point Pleasant Battle Monument.*

Sec. 69. For street paving assessment town of Point Pleasant .....	\$ 310.95	
For cost of government inspection for construction of monument and paving side walks in front of grounds .....	500	500

	1909	1910
For improvement of ground and marking graves..	600	
To C. C. Bowyer, for traveling expenses and per diem .....	216.45	
To J. P. Austin, for traveling expenses and per diem .....	192.80	
To Virgil A. Lewis, traveling expenses .....	148.45	

*Office of Public Roads.*

Sec.70. Traveling expenses .....	\$ 500	\$ 1,500
For salary of state engineer .....	500	2,000
For salary of stenographer and other office help..	300	1,000
For office furnishings .....	500	250
For contingent expenses .....	300	750

*For Pay of State Agents.*

Sec. 71. For compensation of state agents, such amounts is hereby appropriated as may be necessary to pay commission of state agents, payable out of the fund collected; *provided*, that in no case shall the amount exceed ten per centum of the funds collected and paid into the treasury.

*State Board of Regents.*

Sec. 72. Salary of secretary .....	\$ 75	\$ 300
Contingent and traveling expenses .....	250	1,000

*Board of Control.*

Sec. 73. For compensating secretary, stenographers and other assistants .....	1,000	3,900
For traveling expenses including fitting up of-fices .....	2,000	4,000

*Virginia Debt.*

Sec.74. To further carry out the provisions of chapter forty-five of the acts of 1907, the following sum or so much thereof as may be necessary, the same to be paid out as provided in said acts; *provided, however* that no part thereof shall be paid as compensation to any person serving the state or employed by any of its institutions at a stated or monthly salary... \$25,000 \$25,000

*Miscellaneous.*

Sec. 75. Charleston Electric Supply Co., for sundry merchandise furnished engineer .....	\$ 27.91 .
Rudesill & Mead, for scrap baskets, scrub brushes and cuspidors .....	13.80
Lewis Hubbard & Co., for brooms and tubs.....	4.50
G. S. Stromstadt for painting, bronzing, cleansing, etc., inside capitol building .....	1,020.00
G. M. Clindenst, for painting offices, clerks house and senate .....	90.00
West Pub. Co., for publishing codes and supplements..	900.00
B. Engle, for carpets, sweepers, shades and linoleum .....	1,068.71
Hoferer Machine Co., for making 46 chair plates.....	18.00
Noyes, Thomas & Co., for crash towels.....	40.50
P. A. Donovan, for furnishing gas and electrical fixtures for capitol building .....	348.75
Eskew, Smith & Cannon, for cuspidors and baskets.....	16.35
Miss Nola McKinney for twelve portraits of the secretaries of state .....	1,200.00
J.M. Gates Sons Co., for plate glass, glazing, etc.....	48.15
N. S. Burlew, for flags, express and money order.....	32.50
David Dick, for carpentry labor, hardware and general repairs .....	257.18
Arthur R. Foote, for one pair postal scales .....	2.00
Kreig & Price, for brushes, combs and brooms.....	7.70
Grand Rapids Fur. Co. for chairs .....	55.00
Coffey Plumbing Co., for sundries .....	10.85
Lowenstein & Sons, for locks .....	2.65
J. H. Marcum, for per diem and expenses .....	29.55
Geo. Wise, per diem and expenses .....	61.37
Oscar Jenkins, per diem and expenses .....	53.27
Sterrett Bros. D. G. Co. for shades.....	9.00
L. C. Smith & Bro. Typewriter Co., cleaning and repairing typewriters .....	38.91
Balance due Warner Elevator Co., to be paid on the order of the board of public works .....	3,000.00
J. A. Seaman, 15 days extension extraordinary session 1908 .....	90.00

Capital City Bank, assignee of Howard Jarrett, C. F. Tinder. C. L. Topping and Opal Carney .....	1,881.50
Per diem on tuberculosis commission as follows:	
A. B. Littlepage, 9 days .....	45.00
B. A. Smith, 22 days .....	110.00
I. Clay Hicks, 21 days .....	105.00
J. T. Carskadon, 38 days .....	190.00
Dr. J. A. McQueen, 50 days .....	250.00
Dr. J. A. McQueen, amount paid to stenographers .....	21.00
Frank Hood, ten days extension extraordinary session 1908 .....	30.00
Julius K. Monroe, for balance due on Maryland-West Virginia boundaries .....	177.90
Geo. E. Price, counsel for W. Va. in the Maryland-W. Va. boundary line, \$5,000 for services, of which \$2,500 is to be paid out of funds of 1909, remainder to be paid on termination of suit and by order of governor....	5,000.00
E. L. Parsons, for table for office of clerk of house of delegates .....	21.00
Brown, Jackson & Knight, for legal service in case of A. B. White, state tax commissioner vs. commissioners county court of Wirt county, in the supreme court of appeals .....	300.00
C. H. Bland, for costs in case of state vs. West Branch Lumber Co., et al, under act of 1904.....	86.05
To pay the following newspapers for advertising bids for public printing November, 1908:	
Wheeling Intelligencer .....	12.00
Parkersburg State Journal .....	12.00
Morgantown Post Chronicle .....	12.00
Charleston Mail .....	12.00
Huntington Herald .....	12.00
Southern Bell T. & T. Co., for telephone service in the office of clerk of house of delegates, and other service	78.72
Mead Bros. & Co., for chairs, desks, tables for the sergeant at arms and clerk of the senate and stenographers and incidentals .....	522.25
Mead Bros. & Co., for couch, stands, desks for speaker, sergeant at arms, etc.....	142.25

J. A. DeGruyter, for rent of typewriter for finance committee room of the house .....	7.50
C. W. Dillon, for services in preparing indictment, making preparations for and trial of the case for the state vs. Col. Hutson .....	1,000.00
C. W. Dillon, for services rendered and expenses connected therewith in the case of the N. & W. R. R. Co. vs. the board of public works in tax appeal cases in the counties of Jefferson, Mercer, McDowell and Mingo including trip to Welch and Huntington in trial of case, preparation of brief, etc. ....	600.00
Campbell, Hefley & Davis, for legal services in appeal cases B. & O. R. R. vs. State of West Virginia and W. V. C. & P. R. R. Co. vs. State of West Virginia..	1,500.00
Frank Ufferman, for recovering with billiard cloth, speakers and clerks desks in both houses .....	37.00
Jennie Cantrell, for washing towels for senate and house.	25.00
Helen Shrewsbury, painting coat of arms.....	150.00
Helen Kaufman, typewriter rent .....	6.00
Caldwell & Drake, for refunding discounts paid by them..	2,839.69
M. S. Hodges, service rendered house of delegates, 1908, allowed by sergeant at arms .....	576.58
Hamilton & Brooks, for Walnut Hills water furnished sessions 1908 and 1909 .....	123.13
Julius Kaufman, Edgewood Spring water furnished for session 1908 .....	32.90
J. H. Hudson, for keys, repairing locks, etc. ....	22.50
John T. Harris, for services, etc., in connection with the investigating committee .....	1,503.65
Game and fish commission, G. W. McClintic, secretary..	28.74
J. K. Thompson, expenses .....	9.10
J. E. McCausland, expenses .....	32.90
J. W. Flynn, expenses .....	25.00
Underwood Typewriter Co., for repairs to machines.....	5.50
J. L. Tinsley, water for house of delegates .....	25.20
M. K. Malcolm, for 15 days as assistant printing clerk extra session 1908 .....	90.00
Kreig & Price, for soap and toilet articles, session 1909..	80.75

Rudesill & Mead, for mdse. furnished sergeant at arms of the senate .....	11.30
H. N. Hutchinson, for services for board of public works .....	112.00
Fred H. Scott, typewriter rent .....	6.00
Expense of inauguration of Gov. W. E. Glasscock to be expended on order of the governor .....	1,500.00
H. T. Lyttleton, for service rendered the senate finance committee .....	30.00
E. E. Hood, private secretary of the president ten days extension extra session, 1908.....	60.00
John T. Harris, clerk of the senate 80 days extension 1908 .....	800.00
Lewis L. Shrader, minute clerk extra session, fifty days..	300.00
Homer Gray, minute clerk, 50 days, extension 1908....	300.00
E. C. Frame, assistant clerk, thirty days, extension extra session 1908 .....	180.00
W. V. Hedrick, printing clerk, 45 days, extension 1908..	270.00
A. D. Butts, printing clerk, 45 days, extension 1908....	270.00
W. L. Boughner, journal clerk, 20 days, extension 1908..	120.00
Joseph H. McDermott, president of the senate, 15 days extension 1908 .....	90.00
Richard Price, for services drafting tuberculosis bill.....	25.00
Capital City Commercial College typewriters.....	30.00
Ford Newman, elevator man, 40 days at \$1.....	40.00
Chas. H. Thomas, elevator boy, 40 days at \$1 .....	40.00
For expense of municipal code commission as provided by House Joint Resolution 13, session 1909, \$5,000, or so much thereof as may be necessary to be expended on order of the governor .....	5,600.00
H. M. O'Blenness, for ten days as assistant clerk extra session 1908 .....	60.00
Eva Burton, 30 days charwoman at \$1.50 .....	45.00
Rose Cuzzins, 30 days charwoman .....	45.00
Spencer Moore & Co., typewriter rent .....	10.00
J. T. Simms, rent of two typewriters .....	20.00

Sec.76. Wherever the year 1909 is used in this bill, it shall be deemed to mean the fiscal year beginning October 1, 1908, and ending September 30, 1909; and wherever the year 1910 is used in this bill it shall be deemed to mean the fiscal year beginning October 1, 1909, and ending September 30, 1910.

*Be it further enacted by the Legislature of West Virginia:*

Sec. 77. The appropriations herein made to or for any state board or institution shall be drawn from the treasury upon the requisition of the proper officers thereof, made upon the auditor at such times and in such amounts as may be necessary for the purposes for which such appropriations are made; and the auditor shall pay the amount named in any such requisition at such times and in such installments as shall be necessary for which any such appropriation is made. But all requisitions for appropriations for new buildings and substantial betterments, except such as are under control of the board of control, shall be accompanied by the architects estimate that the amount named in such requisition is needed for immediate use. All large appropriations for current expenses for institutions shall be disbursed by the auditor in equal monthly installments, if the same are so needed; and the auditor shall not issue his warrants to pay any money out of the state treasury unless the same is needed for present use.

Sec. 78. The members of all state boards, and of boards of regents or of directors of state institutions, unless a different rate of compensation is provided by law, shall be allowed \$4.00 per day for each day necessarily employed as such (including the time spent in going to and returning from the place of meeting); and the actual and necessary expenses incurred by them in the discharge of their duties, and no mileage shall be paid. But before payment to any such member of any such compensation or expenses he shall make up, in duplicate and certify to its correctness an itemized statement of the number of days spent (giving dates) and of the expenses, which statements shall be filed with the secretary or clerk of the institution, the original, whereof the secretary or clerk shall file or preserve in his office, and the duplicate he shall at once forward to the auditor. If any such member shall willfully make a greater charge for such services or expenses than the truth justifies, he shall be guilty of embezzlement and punished accordingly.

Sec. 79. Every officer, employee, head of department or of an institution or of a board to which appropriation or allowance is made for clerk hire, pay of assistants or of stenographers, shall, in their biennial report to the governor for transmission to the legislature, give the name of each of such clerks, assistants, or stenographers employed by them during such period, the amount paid

to each and (except where temporarily employed) the rate per month of such payment. And every officer, employee, head of a department or of an institution or of a board authorized to draw money from the treasury, or to expend any appropriation, shall, in their biennial report to the governor for transmission to the legislature, make a fully itemized statement of every expenditure made by each of them, to whom paid and for what purpose. If any officer, employee, head of a department or of an institution or of a board is not required by law to make a report to the governor, he or it shall nevertheless make report as required by this section.

Sec.80. All printing, binding and printing paper and stationery for the state superintendent of free schools shall be paid for out of the general school fund. No printing, binding or printing paper stationery for the following named boards, officers or institutions shall be paid for out of the appropriation for public printing, public binding, or for supplying paper or stationery, but shall be paid for out of the appropriations therefor herein made, or out of the expense fund or contingent expense fund thereof, namely:

Board of dental examiners, state vaccine agents, commissioners of pharmacy, state board of examiners, state board of agriculture, state board of embalmers, inspector of mines, bureau of labor, miners hospitals, West Virginia humane society, normal schools, schools for the deaf and the blind, the university and all its departments and branches (including the experiment station) the hospitals for the insane, reform school, the colored institute, the industrial home for girls and the West Virginia asylum. Such boards, officers and institutions, except the state superintendent of free schools, that are herein required to pay for their own printing, stationery and printing paper and binding, have authority to procure the same, or have the same done, on requisition on the superintendent of public printing; or may buy such printing paper and stationery, or have such printing and binding done on competitive bid, under such rules as may be made by the commissioners of public printing.

When stationery or printing paper is procured from the superintendent of public printing, or printing and binding is done on requisition on his office, by any such board, officers and institutions, the superintendent of public printing as to such printing, binding, stationery and printing paper, shall certify the cost thereof to the



auditor, stating to what officer, board or institution the same was furnished, and the auditor shall charge against the proper fund or appropriation of such officers, institution or board the amount thereof, and credit such amount to the proper appropriation made by this act for public printing, binding, stationery and printing paper, *provided*, that the annual or biennial reports required by law to be made to the governor by such board, officers and institutions shall be printed and paid for out of the appropriation for public printing, public binding and for supplying printing paper and stationery, but all such reports shall be typewritten, or prepared in such a manner that the same shall be plainly legible and suitable for printers copy, and only so much of any such reports shall be printed as may be ordered by the governor; and no such reports shall be printed by the public printer, except on the requisition thereof, signed by the governor, which requisition shall state the number to be printed and how the same are to be bound. Such officers, boards and institutions as are required by law to make report to the governor, shall place the same in his hands within thirty days after the close of the period which they are to cover:

Sec. 81. No sum of money shall be paid out of the treasury during the fiscal years ending September thirtieth, one thousand nine hundred and nine, and one thousand nine hundred and ten, beyond the amounts hereby appropriated, unless the same be provided for by the constitution or some general law; but in addition to the sums hereby appropriated for each of said fiscal years, the auditor may, after the expiration of the fiscal year, ending the thirtieth day of September, one thousand nine hundred and ten, and during the first six months of the fiscal year, beginning the first day of October, one thousand nine hundred and ten, make payment for the following institutions, officers and persons, upon proper vouchers, of sums of money not exceeding in the aggregate one-half of the amount appropriated for the same purpose for the fiscal year ending September thirtieth, one thousand nine hundred and ten, for charges, salaries of officers, and running expenses other than items for buildings and betterments, that is to say; for criminal charges; for the support of lunatics in jails; for the pay of teachers, officers and other employees and for running expenses (other than items for buildings and betterments) of the state normal school and its branches, the schools for the deaf and blind, the university, the prepa-

tory branch of the university at Keyser, the preparatory branch of the university at Montgomery, the West Virginia colored institute, the Bluefield colored institute, the reform school and the industrial home for girls; for the current expenses for the West Virginia asylum; the West Virginia hospital for the insane, and the second hospital for the insane, for the maintenance fund of the three miners hospitals; for the expenses of the state board of agriculture, and expenses of inspection of dairies and destruction of diseased animals: for the destruction of the San Jose scale; for salaries and traveling and contingent expenses of the commissioner and assistant commissioner of banking and salary of their stenographer, for salaries, traveling expenses, contingent expenses and clerk hire of the state board of control; the state boards of regents and the department of mines; for expenses and contingent expenses of the state board of health; for salaries and expenses of the commissioners of pharmacy and their secretary; for the expenses of the West Virginia humane society; for salaries and contingent expenses and expenses of employment of the bureau of labor; for uniform examinations, for the governor's civil contingent fund; for maintenance fund of governor's mansion; the contingent fund of the various executive officers; the contingent expenses of the judges and the clerks of the supreme court; the contingent expenses and salaries of clerks of the state librarians' office; the contingent expenses and salaries of clerks of the adjutant general's office; for water, light, heat and contingent expenses of the capitol buildings; for salaries of clerks in the various executive offices, and the supreme court; for salary and expenses of the pardon attorney; for salary and contingent expenses of the game and fish warden; for salaries of the state house and annex employees; for the appropriation made for support of the West Virginia national guard; for salary of state historian and archivist and expenses; for salaries of law clerks, criers and messengers of the supreme court; for printing and binding supreme court reports; for salaries, traveling and contingent expenses of office of public roads; for salaries, clerk hire and expenses of the tax commissioners office; for refunding overpaid taxes and erroneous assessments; for refunding to counties, districts and municipal corporations taxes for county, district and municipal purposes upon lands redeemed at the auditors office and also taxes assessed against railroads and other companies, for county, district and municipal

purposes. And there are hereby appropriated out of the fiscal year ending the thirtieth day of September, one thousand nine hundred and eleven, sums sufficient to make the payments authorized by this section.

Sec. 82. Upon the adjournment of this session of the legislature, the clerk of the house and the clerk of the senate shall jointly make up and furnish the auditor, without delay a certified copy of this and all other acts carrying appropriations.

(Senate Bill No. 178.)

## CHAPTER 85.

AN ACT to create and establish the Grant independent school district in the county of Marion.

(Passed February 24, 1909. In effect from passage. Became a law without the approval of the Governor.)

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| <p>Sec.</p> <ol style="list-style-type: none"> <li>1. Establishing Grant independent school district; boundaries of the same.</li> <li>2. Submission to vote of the people and manner of election; three commissioners to be chosen; term of office.</li> <li>3. Manner of filling vacancies.</li> <li>4. Organization of board.</li> <li>5. Duties and powers of board of education defined.</li> <li>6. Duties of secretary of the board.</li> <li>7. Compensation of commissioners and secretary.</li> <li>8. Scope of the board.</li> <li>9. Power to establish graded and high schools.</li> </ol> | <p>Sec.</p> <ol style="list-style-type: none"> <li>10. Resident and non-resident pupils; may establish kindergarten.</li> <li>11. Title to real estate.</li> <li>12. Superintendent of schools and his functions.</li> <li>13. Appointment of teachers and salaries.</li> <li>14. Division of school moneys.</li> <li>15. Statement of fiscal affairs; assessment for building fund.</li> <li>16. Empowered to issue and sell bonds; limit of interest.</li> <li>17. Indebtedness limited.</li> <li>18. Manner of disbursing money.</li> <li>19. All school laws not inconsistent with this act to remain in force.</li> </ol> |
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*Be it enacted by the Legislature of West Virginia:*

Sec. 1. In the event a majority of the votes cast at an election to be held in Grant district, on the fourth Tuesday in May, one thousand nine hundred and nine, be in favor thereof, the following described territory, in the county of Marion, shall, after the result of such election is ascertained and declared, be the "Grant Independent School District:"

Beginning at the junction of the Tygarts Valley and West Fork rivers, and running thence up the Tygarts Valley river with the west bank thereof to the Fairmont and Bridgeport turnpike, opposite and just below Kingmont store; thence with the said turnpike

to the forks of the roads at the residence of Lorenza R. Vincent, near the county home; thence a straight line to the forks of the county road which forks is between Rhea chapel and Thompson; thence with the county road to the cemetery above Monongah; thence a straight line to the iron bridge across Booth's creek, which bridge is near Squire Shaver's about one mile above the mouth of Booth's creek; thence with the county road up Booth's creek to Monongah number five mine; thence a straight line to a sugar tree on the hill, an original corner to the Thomas E. Russell, Samuel Cooper and Harrison Manley tracts of land; thence a straight line to the residence of Charles Anderson at the head of a small run; thence with the said run passing Monongah number three mine to the West Fork river, and thence with the West Fork river to the place of beginning.

Sec. 2. At a special election to be held pursuant to law within Grant district of Marion county on the fourth Tuesday of May, one thousand nine hundred and nine, it shall be the duty of the county court of Marion county to submit to the legal and qualified voters residing within said Grant district the question of the adoption or rejection of the provisions of this act, of which election the said county court shall give thirty days notice by posting the same at five public places within said Grant district and by publication of said notice once a week for four weeks prior thereto in some newspaper of general circulation in said Marion county. Said election shall be held and conducted and the result thereof ascertained and declared in all respects as now provided by law for general elections in this state. The officers to conduct said election and the ballots to be voted thereat shall be appointed and prepared by said county court, which said ballots shall have printed thereon "For Independent District," and "Against Independent District," and the legal voters in said district voting at said election in favor of the establishment of said independent district, shall strike from the ballot so voted by them the words "Against Independent District," and those voting at said election against the establishment of said independent school district shall strike from the ballot so voted by them the words "For Independent District." The said ballots and the necessary booths, ballot boxes, poll books, and all other appliances required by law and necessary for the holding of such election, shall be furnished and supplied by the said county court, which shall also perform the duties and be subject to all the

penalties prescribed by law for ballot commissioners. The expense of said election shall be paid by the board of education of Grant district, in case a majority of the voters voting at said election is against the establishment of said independent district; but if a majority of the voters voting at said election is in favor of the establishment of said independent district, the expense of such election shall be paid by the board of education of such newly established and created independent district.

At the said election there shall also be elected by the legal voters residing within the boundaries mentioned in the first section of this act three commissioners, each of whom shall reside and be a legal voter within such independent district. The term of office of each of said commissioners shall begin on the first day of July, one thousand nine hundred and nine, and the term of office of one of said commissioners shall expire on the thirtieth day of June, one thousand nine hundred and eleven, the term of office of another of said commissioners shall expire on the thirtieth day of June, one thousand nine hundred and thirteen, and the term of office of the other of said commissioners shall expire on the thirtieth day of June, one thousand nine hundred and fifteen. The length of term of each candidate so voted for at said election shall be designated on the ballots used at said election. Thereafter the term of office of such commissioners shall be six years, and one member shall be elected every two years after said first election so to be held on the fourth Tuesday of May, one thousand nine hundred and nine; such member to be elected at the general election to be held within said district for state, county and district officers.

Sec. 2. Any vacancy that may occur in the office of school commissioner by death, resignation, refusal to serve or otherwise, shall be filled by the remaining commissioners at the first meeting of the board held thereafter, and the person chosen to fill such vacancy shall hold his office until the next election of school commissioners, when a commissioner shall be elected for the unexpired term.

Sec. 4. The board of education shall elect annually at their first meeting to be held on the first Monday in July, one of their members to act as president of said board. The board shall at the same time elect a secretary, who shall perform such duties as may be required of him by the board and by the general school law.

Sec. 5. The board of education so elected and organized shall be.

a body corporate by the name of "The Board of Education of Grant Independent School District in the County of Marion," and as such may sue and be sued, plead and be impleaded, contract and be contracted with, and may have a common seal, may purchase, hold and grant estates, both real and personal, and make such rules and regulations not inconsistent with the constitution and laws of this state, as may be necessary for the proper conduct of the affairs of the said independent school district, and provide the length of the term of school to be taught within said district.

Sec. 6. The secretary shall record in a book provided for the purpose all of the official acts and proceedings of the board, which shall be a public record open to the inspection of all persons interested therein. He shall preserve in his office all papers containing evidence of title, contracts and obligations; he shall record and keep on file in his office all such papers and documents as may be required by any of the provisions of this act, or by any order of said board of education. In his absence the board may appoint a secretary *pro tempore*.

Sec. 7. Said commissioners shall each receive as compensation for their services the sum of twenty dollars per annum; and the secretary of said board shall receive as compensation for his services the sum of fifty dollars per annum; the same to be paid out of the building fund of said district.

Sec. 8. The board of education shall have exclusive control of all schools within the district; it shall have power to make all necessary rules and regulations for the government of the schools of the district, for the admission of pupils therein, for the exclusion of pupils whose attendance would be dangerous to the health, or detrimental to the morals or discipline of the schools. The said board shall have authority to prescribe the text books to be used in said district, in addition to those prescribed for the county, and may furnish books and stationery for the use of indigent children in attendance at the schools. The board may furnish all necessary apparatus and books for the use of the schools, and incur all other expenses necessary to make the system efficient for the purpose for which it was established, and pay for the same out of the building fund of the district.

Sec. 9. The board of education shall have power to establish within said district both graded and high schools, and grant diplomas to the graduates thereof; *provided, however, that white and*

colored schools shall be separate and distinct from each other. The schools of said district shall be subject to such grading as the board may direct.

Sec. 10. Admission to the various schools of the district shall be gratuitous to all children, wards and apprentices, who are actual residents within the district at the time they enter said school, and who are between the ages of six and twenty-one years. Non-residents of the district may be allowed to attend the schools of the district upon payment, in advance, of such tuition as the board may prescribe.

The board may also establish in connection with the schools of such district a kindergarten, to which may be admitted children between the ages of four and six years, under such regulations as may be prescribed by law for the admission of youth to the other schools of such district.

Sec. 11. The title to all real estate and personal property within said district, and now held and used for school purposes, shall be, and the same is hereby vested in the board of education of Grant independent school district.

Sec. 12. Annually on the first Monday in July, or as soon thereafter as circumstances will permit, the board shall appoint a superintendent of school for the district, and fix his salary. Said superintendent, in addition to the duties specified in this act, shall perform such other appropriate duties with relation to the schools of the district as the board may prescribe. When the office of such superintendent shall have become vacant from any cause before the expiration of the term for which he shall have been elected, the board shall fill the same by appointment for the unexpired term.

The superintendent shall not directly or indirectly receive any gift, emolument or reward for his influence in recommending the use of any book, apparatus or furniture of any kind whatever in the schools of the district.

Sec. 13. The board of education shall appoint all teachers for public schools of any grade within the said district, and fix their salaries, at a meeting held not later than the first Monday in August, of any year; but no person shall be employed to teach a school of the grade for which the appointment is made, including the superintendent, without having a satisfactory certificate obtained and issued as required by law in the examination of teachers for the public schools of this state.

Sec. 14. All school moneys, whether belonging to the teachers' or building fund of said Grant district, which may be unexpended when the provisions of this act take effect, or to which said district may be entitled for the year one thousand nine hundred and eight, shall be divided between the said Grant district and the Grant independent school district in proportion to the amount of taxable property in each of said districts, after the creation of the said independent school district. The last assessment for state and county purposes shall be taken as the basis of such settlement and division. It shall be the duty of the board of education of each of said districts to make the settlement provided for in this section not later than the thirty-first day of July, one thousand nine hundred and nine.

Sec. 15. It shall be the duty of the board of education, at a meeting to be held on the second Tuesday in August of each year, to ascertain the condition of the fiscal affairs of the district and make up an itemized statement thereof. Which statement shall be published for the time and in the manner provided in the general school law.

The meeting of said board shall then stand adjourned until the fourth Tuesday in August, at which time it shall re-convene and shall thereupon levy as many cents on each hundred dollars of the assessed valuation of the property of the district, according to the last assessment thereof, as will produce the amount shown by the said statement necessary to be raised for the building fund, and levy in like manner the amount necessary for the teachers' fund, to continue the schools in such districts for such term as may be prescribed by the board.

Sec. 16. The board of education is authorized and empowered at any time after this act takes effect, to issue and sell the bonds of said district and with the proceeds thereof erect one or more public school buildings within and for the use of said district; said bonds to bear interest at a rate not exceeding six per centum per annum and to be payable in not less than ten, nor more than thirty-four years from the date thereof.

Sec. 17. No debt shall be incurred under this act which shall, including existing indebtedness in the aggregate, exceed two and one-half per centum on the value of the taxable property in said district, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness, nor



without at the same time providing for the collection of a direct annual tax, sufficient to pay annually the interest on said debt, and the principal thereof within and not exceeding thirty-four years; nor unless all questions connected with the same have been first submitted to a vote of the people of said district, at a special or general election and have received three-fifths of all the votes cast for and against the same.

All such elections shall be held and conducted and the result thereof ascertained and certified in the manner provided by the general school law.

Sec. 18. No money shall be paid out by the officer collecting the taxes levied in said independent school district, except on an order signed by the president and secretary of said board and specifying upon its face the particular account to which the same is chargeable and the purpose for which it is drawn, nor shall any credit be allowed to the said collecting officer in his statement, which shall be made annually to the said board, upon any voucher except such order.

Sec. 19. All the provisions of the general school law of this state, not inconsistent with this act, shall remain and be in full force and effect in the said independent school district.

(Senate Bill No. 143.)

## CHAPTER 86.

AN ACT creating a fund in the treasury of the state, to be known as the state road fund, and providing and regulating the collection and disbursement thereof.

(Passed February 24, 1909. In effect ninety days from passage. Became a law without the approval of the Governor.)

Sec.

1. Provision for state road fund; purpose defined.
2. Legislative appropriations; surplus revenue of penitentiary to be applied to funds; license money for automobiles and fines for violating automobile laws to be credited to road fund; moneys from special taxes.
3. State aid to counties; how the money shall be apportioned.
4. In case county does not avail itself of aid.
5. County courts may request improve-

Sec.

6. Extends to cities, towns and villages under one thousand inhabitants; power of governing bodies; jurisdiction.
7. Selection of roads to be constructed.
8. Maximum cost to magisterial districts.
9. Term "Improvement" defined.
10. Surveys, plans and specifications to be submitted to county court; if approved submitted to state commissioner of public roads; how work may then proceed.

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| <p>Sec.<br/>11. Duties of county courts; letting of contracts; must be approved by state commissioner; bonds of contractors.</p> <p>12. Five per cent. of contract price to be withheld.</p> <p>13. Papers to be filed with the state commissioner.</p> <p>14. Inspector of work under contract; compensation.</p> <p>15. Certificate of partial payments; to be paid by sheriff.</p> <p>16. Permanent improvement of public roads need not be done by contract, under certain conditions; employment of engineering corps.</p> <p>17. Duties of county road engineer.</p> <p>18. State to pay one third cost of all roads built; not liable for rights of way, etc.</p> <p>19. Governor and state commissioner to certify amounts to be paid counties; sheriff's commission.</p> <p>20. Board of school fund may loan un-invested money to counties for</p> | <p>road purposes.</p> <p>21. Plans of roads may be changed; conditions attached.</p> <p>22. Roads constructed under this act shall be maintained by the county court; exceptions.</p> <p>23. Repair of roads; state aid withheld from counties neglecting to perform such work.</p> <p>24. County court to keep roads in good repair.</p> <p>25. Abutting property owners may secure road improvement by paying entire expense.</p> <p>26. Two-thirds of owners of land bordering on any public road may secure permanent improvement when guaranteeing ten per centum of cost; limitations of county court.</p> <p>27. Land owned by state; bodies having control of same may consent to road improvement and enter into contracts.</p> <p>28. Roads constituting boundary lines; how they may be improved.</p> |
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*Be it enacted by the Legislature of West Virginia:*

Sec. 1. To provide means whereby the state of West Virginia may aid the counties of the state in surveying and making maps of the public roads located therein, for locating and constructing new roads, for reconstructing old roads, for relocating and constructing roads already established as public roads and to pay the state's share in the cost of such work, and to provide for the interest and redemption of any state bonds which may hereafter be issued, the proceeds of which shall have been expended in constructing public roads as hereinafter provided, there is hereby set apart and created in the treasury of the state of West Virginia a fund to be hereafter known as the state road fund to be collected and disbursed as set forth in this act.

Sec. 2. The state road fund may be supplemented from time to time by the appropriations from the legislature, and by any other legislative enactment. It may be supplemented at any time by gifts from private citizens or from any other source.

All moneys and income arising from the hiring of inmates in the penitentiary over and above the sum of twenty thousand dollars as provided in section thirty-seven-a-one of chapter one hundred and sixty-three of the code of one thousand nine hundred and six, shall be paid by the board of directors of said institution into the state treasury to be set apart to the credit of the state road fund.

All moneys arising from the sale of licenses to maintain and

operate automobiles in this state and all fines imposed for violations of the automobile laws of the state, shall be paid into the treasury of the state to be set apart to the credit of the state road fund.

All moneys arising from special taxes levied for the building or maintenance of state aid roads shall be paid into the treasury of the state to be set apart to the credit of the state road fund.

Sec. 3. The money in the state treasury set apart to the credit of the state road fund, as herein provided, shall be apportioned among the several counties applying for state aid in the manner hereafter provided, and the amount so appropriated shall be based upon the amount of taxes levied and collected therein for the repair and improvement of public roads. The amount of taxes upon which this apportionment is based shall include all district and county road taxes and any tolls levied and collected for maintenance of any of the toll roads of the state.

Sec. 4. If any county shall not avail itself of the aid from the state apportioned under the provisions of this act then and in that case the amount so apportioned shall remain in the treasury of the state to the credit of the state road fund to be again apportioned among the counties of the state at the next annual apportionment.

Sec. 5. The county court of any county may pass a resolution, stating that public interest demands the improvement of a public road or section thereof within the county, and requesting that it be constructed or improved as provided in this act. Such resolution shall contain a description of such public road or section thereof. Such public road or section thereof shall not include any portion of the public road within an incorporated city, town or village, unless it be necessary to complete the connection of such improved public road with the public road already improved or to be improved under this act.

The clerk of the county court shall within ten days after the passage of such resolution, transmit a certified copy thereof to the state commissioner of public roads.

Sec. 6. The provisions of this act shall extend to incorporated cities, towns and villages excepting those having a population of one thousand inhabitants or more.

The town council or other governing body, the mayor or other chief executive officer respectively of any town, village or other municipality shall have the power and shall perform all the duties

as are in this act required of the county court of the county and the sheriff of the county respectively.

Any of said municipalities may raise by taxation, funds to pay the cost of the construction of any road or roads or may issue bonds for the payment of the same in the manner prescribed by law. It being the expressed intention of this section to confer upon towns and villages or other municipalities full power to improve any road or section of road under the provisions of this act, all proceedings conforming as nearly as possible to the provisions of this act.

Any such road or section of road so constructed by any town or village or other municipality other than the county shall be exclusively under the jurisdiction and control of such town, village or other municipality and shall be repaired and maintained by such municipality.

Sec. 7. When more roads are petitioned for in any county than can be constructed in any one year the county court of the county and the state commissioner of public roads shall have power and authority to select from the roads petitioned for the ones first to be constructed, having first regard to the most important roads and the distribution of the benefits of this act to all parts of the county.

Sec. 8. The county court of the county may, before approval of any road require as a condition of said approval, that any magisterial district through which said road is to be constructed shall pay not to exceed ten per centum of the cost of said improvement within said district, said payment to be applied to the improvement of roads constructed under this act.

Sec. 9. The term "improvement" under the provisions of this act shall mean any work, whether engineering or construction work which is done according to plans agreed upon by the state commissioner of public roads and the county court, and which tends toward and has for its ultimate object the permanent location and improvement of any public road or section thereof within the county, by the construction of a macadamized road or a telford or other stone road or a road constructed of gravel or other similar materials, or a road constructed of asphaltum, brick or other paving materials, in such manner that the same, of whatever materials constructed shall, with reasonable repair thereto, at all seasons of the year, be firm, smooth and convenient for travel.

Sec. 10. The said county court after the passage of the resolution, shall if it be construction work, cause a survey of said road so to be improved to be made, and plans, cross sections and speci-

cations of the work to be done on the same, to be prepared. The survey shall indicate the width and length of said road, and shall also show how much of said road may be improved by deviation from the then existing lines. When the said plans, cross sections and specifications shall have been prepared they shall be submitted to the county court of the county, together with an estimate of the cost of the work, for its approval or rejection. If such court shall approve the same they shall then be submitted to the state commissioner of public roads for his approval or rejection, whose duty it shall be, before approving of said plans, cross sections and specifications, to ascertain by personal inspection or otherwise the natural character of the soil upon which such road is proposed to be constructed, and any and all other facts that he may deem important. If, after examination of the plans, cross sections and specifications, and an inspection of the road, as aforesaid, he shall be satisfied as to the advisability of the improvement of the road as contemplated, and that one-third of the cost of the construction of said road, together with one-third of the cost of the construction of all other roads or sections of roads in this state, under plans and specifications previously approved by him, will not in any one fiscal year exceed the sum set apart in the treasury of the state to the credit of the state road fund, and available for the county according to the provisions of this act, for such other sum as may in any year be appropriated for that purpose, then he shall approve the said plans, cross sections and specifications; otherwise he shall reject the same.

Sec. 11. Within thirty days after the approval of the plans, cross sections and specifications by the state commissioner of public roads it shall be the duty of the county court of the county to advertise for bids for said work in two or more of the public papers, of different politics, printed in said county if there be such, and in at least one daily paper of general circulation throughout the state for three weeks successively, at least once in each week. This advertisement shall state the place where bidders may examine said plans, cross sections and specifications, and the same time and place where bids for said work will be received by the county court within thirty days from the awarding of the contract. Each bidder must accompany his bid with a certified check, payable to the sheriff of the county for five hundred dollars, as a guarantee that if said work is awarded to him he will enter into a contract with said county court for the same. The contract let by the county

court must be executed together with a bond of the successful bidder in the sum of at least the estimated cost of said work with two or more sureties, freeholders of the county, or a surety trust company created by the state or a surety or a trust company of another state authorized to transact business within this state, to be approved by the county court conditioned upon the faithful performance of said work in strict conformity with the plans, cross sections and specifications for the same. The contract, before any work is done thereunder, must be exhibited to the state commissioner of public roads for his approval in writing thereon, and said commissioner is hereby authorized, whenever in his judgment the best interests of the state require him so to do, to reject the same; in which case he shall write upon said contract the word "rejected," and append thereto his signature and official title of office, and the said contract, and the bond required to accompany the same shall from the time of such rejection be absolutely null and void; but such rejection shall in no wise operate to prevent said court from re-advertising for bids and proceeding thenceforth under the provisions of this act; *provided*, it is done in four months after such rejection; otherwise the said approval of the commissioner of public roads shall be null and void.

Sec. 12. The time and manner of payment for work done under any contract awarded under this act shall be set forth in said contract, and at least five per centum of the contract price shall not be paid to the contractor until after the expiration of one year from the completion of the work and acceptance thereof in writing by the commissioner of public roads.

Sec. 13. A true copy of the specifications, bid, contract, bond, and justification of surety, certified to be such by the president of the county court, shall immediately after the awarding of any contract be furnished by said court to the state commissioner of public roads to be filed and remain on record in the office of said commissioner.

Sec. 14. Immediately after the awarding of the contract under the provisions of this act the state commissioner of public roads shall designate a competent inspector to inspect the work required to be performed under said contract who shall receive for his services, if not otherwise paid, the sum of three dollars per day to be paid out of the sum apportioned to said county for the one-third of the cost of all roads constructed under this act. Such inspector before assuming the duties of his office shall make and

subscribe to an oath or affirmation before any officer authorized to administer the same, that he will faithfully and to the best of his ability and understanding perform all the duties of his office. The state commissioner of public roads may, however, summarily discharge any inspector and may employ a new inspector in the place of the one so discharged.

Sec. 15. Where any contract provides for partial payments based upon the amount of work done, it shall be the duty of the inspector as each payment becomes due, to present to the county court a certificate signed by such inspector and the county engineer, in which certificate shall be stated as nearly as can be the amount of work done for which payment is to be made, and that the same has been done in all respects, in strict compliance with the contract, plans and specifications. When the work done under any contract shall have been fully completed the inspector and county engineer shall prepare a detailed and itemized statement in quadruplicate of the cost of the improvement, certifying to the same, one copy whereof shall be filed with the county court of the county, one with the county road engineer and two with the state commissioner of public roads.

All payments due to any contractor or contractors or others under the provisions of this section shall when certified to by the inspector and the county road engineer, be presented to the county court and if by them found correct shall upon the order or warrant of said court, signed by the president and clerk thereof, be paid by the sheriff.

Sec. 16. If the work agreed upon by the county court of the county and the state commissioner of public roads shall, in any case, be only surveys of public roads and the making of maps of the same for the purpose of indicating the necessary changes to be made therein according to some definite plan for an extended system of permanent improvement of the public roads as indicated in section five of this act, then it shall not be necessary for the county court of the county to advertise for bids and let to contract as provided in this act for the permanent improvement of the public roads, but shall be done in co-operation with the county road engineer and the state commissioner of public roads and according to the plans and general directions of the commissioner.

And for this purpose the state commissioner of public roads may employ engineering corps to assist in this work and the total expense incurred thereby shall be borne in the same proportion by

the district, the county and the state as is provided in this act for the payment of the total cost of permanent improvement of the public roads by state aid.

Sec. 17. The county road engineer shall keep an itemized account of the work done and he shall make monthly statements thereof in quadruplicate setting forth the name of each person so employed, the compensation per day and each item of expense together with the date thereof, which statement of account shall be signed and certified to by the county road engineer, one copy of which shall be retained by the county road engineer, one filed with the county court of the county and the other two sent to the state commissioner of public roads and if found correct, shall be paid in the same manner and form as is prescribed in this act for the payment of contract work for the permanent improvement of the public roads.

Sec. 18. One-third of the cost of all roads built under the provisions of this act shall be paid out of the moneys set apart in the treasury of the state to the credit of the state road fund, and not otherwise appropriated. But no portion of the costs of any necessary rights of way nor any portion of damages to be paid property owners or others because of such improvement shall be paid by the state.

Sec. 19. The governor and the state commissioner of public roads shall certify from time to time to the state auditor, when a road is completed to the satisfaction of the commissioner of public roads, the amounts to be paid to the county, and the state auditor shall draw his warrant for the amount so certified on the state treasurer in favor of the sheriff of the county and the state treasurer shall thereupon pay the same to the sheriff, who shall be the custodian thereof and shall be accountable therefor to the county court of the county.

For receiving, caring for and disbursing the money apportioned to the county under the provisions of this act from the state road fund, the sheriff shall receive a commission of one per cent.

Sec. 20. The board of the school fund may loan uninvested money belonging to said board, to the counties for the purpose of permanently improving the public roads under the provisions of this act, at a rate of interest not to exceed four per cent per annum and a preference shall be given the county rather than the citizen or company desiring such loan.

The county desiring such loan shall issue bonds in favor of the



board of the school fund in like manner and effect as other county bonds are issued.

Sec. 21. Any road constructed under the provisions of this act and after the plans and specifications and contract have been approved by the state commissioner of public roads, if it is deemed advisable by the county court of the county and the state commissioner of public roads to change the plans, if it costs less than the original contract, the difference between the cost and the amount of the original contract shall be deducted from the original contract. If the cost be more than the original contract the difference shall be added. All changes in plans and specifications shall have the approval of the county court of the county, the county road engineer, the state commissioner of public roads and the contractor.

If there is not a sufficient sum of money in the county treasury available for such purposes, to provide for the payment of the county's share of the additional costs, the county court shall include such deficiency in the annual tax levy which shall be assessed, collected and paid over into the county treasury as other county taxes are assessed, collected and paid over.

If there is not a sufficient sum of money in the state treasury apportioned to said county under the provisions of this act for the payment of the state's share of the additional cost, the state commissioner of public roads shall allow the same from the next annual apportionment.

Sec. 22. Any road constructed under the provisions of this act shall forever hereafter be a county road and the duty of keeping the same in repair shall devolve upon the county court of the county to be maintained out of the general county fund as provided by law and all other powers and duties respecting such road shall be imposed upon and vested in the said county court; *provided, however,* that nothing in this act shall divest the municipal authorities of any town or village of their power to construct, grade, pave, curb or repair the sidewalks along said county roads nor shall this power of said governing bodies, divest the county court of their right to construct across or under the sidewalks, necessary culverts or otherwise provide for the maintenance of such county roads.

Sec. 23. If any such road shall become out of repair and shall not be repaired within sixty days after notice in writing so to do, given by the state commissioner of public roads to the county

court of the county or to its clerk, the said commissioner of public roads shall certify such neglect or refusal to the state auditor who shall withhold payment to such counties of all money apportioned or that may hereafter be apportioned to such counties by the state and no payment shall be made to said county until the state commissioner of public roads shall certify to the state auditor that said road has been placed in a good state of repair.

Sec. 24. The county court of the county shall appropriate all moneys necessary to keep any and all roads constructed under this act in good repair and free from obstructions. The cost of all repairs and removal of obstructions shall be paid by the sheriff of the county upon the order of the county court signed by the president and clerk thereof; and all bills for repairs and for the removal of obstructions shall be verified by affidavit, and shall be certified to be correct by the county road engineer.

Sec. 25. If owners of property abutting on any public road in any county which has not been approved or is not undergoing improvement, desire said road or any section thereof to be improved and shall certify in writing to the county court of the county that they are willing to bear the entire expense of such improvement the county road engineer shall prepare plans, cross sections and specifications, for the work to be done on such road or any section thereof so to be improved, and shall submit the same to the owners, and if satisfactory to such owners they are hereby authorized to enter into contract for such work, said contract to be first submitted to the county court of the county for its approval. Upon the completion of the work to the satisfaction of the county road engineer and the county court and upon the submission to said county court of proper receipts showing full payment of all work done, the said county court may by resolution declare that said road or any portion thereof be thereafter a county road.

Sec. 26. Whenever there shall be presented to the county court of the county a petition signed by the owners of at least two-thirds of the land and real estate fronting or bordering on any section or sections of any public road being not less than one mile in length, praying that said road may be permanently improved according to the provisions of this act and setting forth that they are willing because of the peculiar benefits to the land fronting or bordering on said roads from such improvement, to guarantee an amount not less than ten per centum of the entire cost of the improvement of the said road including the amount necessary to re-

surface, re-build or improve said road in the manner provided in this act, the said county court shall thereupon cause a survey to be made with maps, plans, cross sections and specifications of the same and shall make application to the state commissioner of public roads for state aid for said section or sections of road according to the provisions of this act; *provided, however,* that nothing in this section shall be so construed as compelling the county court of any county to execute contracts in any year in a total amount greater than twenty-five per cent of the total amount levied for roads and bridges of that county for said year.

Sec. 27. Whenever any public road is sought to be improved under the provisions of the twenty-fifth section of this act upon which road any land or real estate owned by the state of West Virginia may front or border, the board of managers or other body having control and management of said lands and real estate are hereby authorized to consent to the improvement of said road and to enter into contract for the same in the manner directed by said section, and to pay for said improvement out of any money appropriated to said board of managers or other governing body for such purpose.

Sec. 28. The provisions of this act shall extend to the improvement of any road or section of road constituting a boundary line between two counties, whenever an agreement shall be adopted by the county courts of both counties.

(Senate Bill No. 144.)

## CHAPTER 87.

AN ACT to create a state road tax, and fixing the rate of levy therefor.

(Passed February 26, 1909. In effect ninety days from passage. Became a law without the approval of the Governor.)

Sec.  
1. Provision for state road tax.  
2. Set apart as a separate fund.

Sec.  
3. Tax one cent on every \$100 valuation.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. In every year for which a different rate is not prescribed by special enactment, there shall be levied, collected and paid into

the treasury of the state in the manner as now prescribed, or that may hereafter be prescribed by law for the levying, collecting and paying into the state treasury of other state taxes, a special state tax to be hereafter known as the "state road tax."

Sec. 2. The state road tax shall be set apart in the treasury of the state to the credit of the state road fund to be disbursed and conditioned as is now or may hereafter be prescribed by law for the disbursement of the state road fund for the permanent improvement of the public roads of the state in co-operation with the counties.

Sec. 3. The state road taxes on all real and personal property not exempt from taxation shall be for the year one thousand nine hundred and nine, and every year thereafter, one cent on every one hundred dollars valuation thereof.

(Senate Bill No. 128)

## CHAPTER 88.

AN ACT to amend and re-enact sections four, six, eight, nine, eleven, fourteen, sixteen, nineteen, twenty-two, twenty-seven, twenty-eight and thirty-two of chapter three of the acts of one thousand nine hundred and eight; of the extraordinary session of the legislature of West Virginia, concerning the charter of the city of Logan, and to add section thirty-seven, describing and defining the duties of the solicitor of said city.

(Passed February 23, 1909.)

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| <p>Sec.<br/>4. Municipal authorities, elective and appointive; councilmen.<br/>6. Who eligible to hold office.<br/>8. Powers of council as to improvements and promotion of general welfare of city.<br/>9. Vacancy in office; how filled.<br/>11. First election; term of office; appointive officers; contested elections.<br/>14. Removal from office; right of appeal.<br/>19. Estimate of expenditures; levy.</p> | <p>Sec.<br/>22. License for the sale of spirituous liquors; person licensed to give bond; question of granting or refusing license for sale of liquors to be submitted to voters; one license for each one thousand persons, residents in said city.<br/>27. Treasurer to execute bond; duties of.<br/>28. Assessor, duties of; compensation.<br/>32. Salaries to be fixed by council.<br/>37. Solicitor, duties of; compensation.</p> |
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*Be it enacted by the Legislature of West Virginia:*

That sections four, six, eight, nine, eleven, fourteen, nineteen, twenty-two, twenty-seven, twenty-eight and thirty-two, of chapter

three of the acts of one thousand nine hundred and eight, of the extraordinary session of the legislature of West Virginia, be amended and re-enacted and section thirty-seven be added, to read as follows:

Sec. 4. The municipal authorities of said city shall be a mayor, recorder, chief of police, assessor, treasurer, solicitor, health officer, street commissioner, and (until the city shall be divided into wards as provided in section three) five councilmen.

The mayor, recorder, treasurer, assessor and councilmen shall be elected by the qualified voters of said city; the other officers named shall be appointed by the common council. After the territory of said city shall have been divided into wards, then each ward shall have one councilman for each three hundred or fraction thereof exceeding one hundred and fifty of its inhabitants, but each ward shall have at least one councilman.

Sec. 6. No person shall be eligible to any elective office, in said city, unless he is a qualified voter thereof, nor unless he has resided therein for at least one year next before his election, and was for the preceding year assessed with taxes upon real or personal property within said city of the assessed value of four hundred dollars, and shall have actually paid the taxes so assessed, and if a councilman he shall be a *bona fide* resident of the ward for which he is elected, and the removal from the ward of a councilman from which he is elected shall vacate his office; and no person shall be eligible to any office in said city unless he is a qualified voter thereof.

Sec. 8. The council of said city shall have power to lay off, vacate, close, open, alter, grade and keep in good repair the roads, streets, alleys, pavements, sidewalks, crosswalks, drains, and gutters therein, for the use of the public, and to improve and light the same and keep the same clean and free from obstructions of every kind; to regulate the width of pavements and sidewalks on the streets and alleys, and to order the pavements, sidewalks, footways, drains and gutters to be kept in good order, free and clean by the owners, or occupants of the real property next adjacent thereto; to establish and regulate markets, prescribe the time for holding the same, provide suitable and convenient buildings therefor; prevent injury or annoyance to the public or to individuals from anything dangerous, offensive or unwholesome; to prohibit or regulate slaughter houses and soap factories within

the city limits, or the exercise of any unhealthful or offensive business, trade or employment; prohibit all nuisances within the city limits, or to require and compel the abatement or removal thereof, by or at the expense of the owner of the ground on which they are placed or found; to cause to be filled up, raised or drained by or at the expense of the owner of any city lot or tract of land covered or subject to be covered by stagnant water; to prevent horses, hogs or sheep or other domestic animals or fowls of any kind from going or being at large in said city, and as one means of prevention thereof, to provide for impounding and confining such animals and fowls and upon failure to reclaim, for the sale thereof; to protect places of divine worship and to preserve order in and about the premises where such worship is held; to regulate the keeping of gunpowder or other inflammable or dangerous substances; to protect and regulate the building of houses and other structures, and for making and maintaining of division fences by the owners of adjoining premises and for the proper drainage of city lots or other parcels of land by or at the expense of the owner or occupent thereof; to provide against damages or danger by fire; to punish for assault and battery; to prohibit loitering or visiting houses of ill fame or loitering in saloons or upon streets; to punish for offenses committed and forbidden under and by virtue of section seven of chapter one hundred and forty-eight of the code of West Virginia, relating to the carrying of pistols and other dangerous and deadly weapons; to prevent the operation and maintenance of slot machines and other gambling devices; to prevent lewd and lascivious conduct, the sale or exhibition of indecent pictures or other representations; to prevent and punish for profane swearing; illegal sale of all intoxicating liquors; to protect the persons of those residing or being within the city, and to prevent and punish for all crimes and misdemeanors other than felonies; to build, purchase or lease and use a suitable place within or near said city for the safe keeping or punishment of persons charged with or convicted of the violation of ordinances; to provide for the employment of persons convicted of the violations of ordinances or who may be committed in default of the payment of fines, penalties or costs, and who are otherwise unable to discharge the same, by putting them to work for the benefit of the city, and to use such other means to prevent their escape while at work as they may deem expedient;

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to acquire, erect or prohibit the erection of gas works, electric light works, or water works within said city limits; to prevent injury to such works or the pollution of any gas or water used or intended to be used by the public or individuals, and to do all things necessary to adequately supply said city and inhabitants thereof with pure, healthful and wholesome water; to use, generate, distribute, sell and control the electricity and gas for heat, light and power, and to furnish light for the streets, houses, buildings and other places in and about said city; to provide a sewerage system for said city; to regulate the speed of moving trains in or through said city; to organize one or more fire companies and to provide the necessary tools, implements and engines or any of them for their use; to make regulations with respect to the erection and location of all telephone, telegraph, electric light or other poles within said city, and the extension of wires, lines or poles by any individual or corporation; to grant and regulate all franchises in, upon, over and under the streets, alleys and public ways in said city, under such restrictions as shall be provided by ordinance, but no exclusive franchise shall be granted nor shall any franchise be granted for a longer period than twenty years; to create by ordinance, such committees or boards and grant such authority thereto as may be deemed advisable; to provide for the annual assessment of taxable property in said city, including dogs kept therein, and to provide a revenue for the city municipal purposes, and appropriate such revenue to its expenses and generally to take such measures as may be deemed necessary or advisable to protect the property, public or private, within the city; such police regulations as may be ordained by said city and the right and power to enforce the same, shall extend one mile in the state of West Virginia beyond the corporate limits of the city; *provided, however,* that no fine shall be imposed for the violation of any ordinance exceeding one hundred dollars, and that no person shall be imprisoned or compelled to labor as aforesaid for more than six months for any one offense, and in all cases where a fine is imposed for an amount exceeding ten dollars, or the person be imprisoned or compelled to labor as aforesaid, an appeal may be taken from the decision, upon the same terms and conditions that appeals are taken from the judgments of justices of the peace of this state, and in no case shall a judgment for fine of less than ten dollars be given by the mayor, or the person acting

in lieu of the mayor, if the defendant, his agent or attorney, object thereto.

The council of said city shall have power and authority to control and regulate the construction and repair of all houses and other buildings within the said city; to provide for the granting of building permits; to cause the removal of unsafe walls or buildings, and may upon the petition of any person or persons owning the greater amount of frontage of lots abutting on any street between two cross streets, or in any square in said city, prohibit the erection on such streets, or in such square, of any building or any addition to any building unless the outer walls thereof be made of brick and mortar or other fireproof materials, and to provide for the removal of any building or addition, which shall have been erected contrary to such prohibition, at the expense of the owner or owners thereof.

Sec. 9. Whenever a vacancy shall occur in the office of mayor, recorder, treasurer assessor or councilman, the common council shall fill the same by election, by a *viva voce* vote for the unexpired term.

Sec. 11. The first election hereunder shall be held the first Thursday in January, one thousand nine hundred and eight, at which election all the elective officers provided for in section four, shall be elected; the term of office of all officers elected at said first election shall begin on the first day of February, one thousand nine hundred and eight, and shall continue until the first day of May, one thousand nine hundred and nine, and until their successors are duly elected and qualified; the next election held hereunder shall be held on the first Thursday in April, one thousand nine hundred and nine, and all subsequent elections, each second year thereafter on the first Thursday in April. The term of office of all persons elected hereunder in one thousand nine hundred and nine, and all succeeding elections, shall begin on the first day of May, next after said election, and shall be for two years and until their successors are elected and qualified, unless they are sooner removed in the manner provided by law.

All the appointive officers shall hold their office during the pleasure of the common council; the election shall be held, conducted and the result ascertained, certified, returned and determined under the constitution and general laws of the state, governing municipal elections, and shall conform as nearly as practicable



to such laws; contested elections shall be heard and decided by the council, and the proceedings therein shall conform as nearly as may be to similar proceedings in the case of county and district officers; the council shall be the judge of the election returns and qualifications of its own members; in case two or more persons shall receive an equal number of votes for the same office, if such numbers be the highest cast for such office, the persons under whom the supervision is held, shall decide by lot which of them shall be elected and shall make their return accordingly.

Any candidate thinking himself aggrieved by the action of said council in any contested election, shall have the right to appeal to the circuit court of the county of Logan.

Sec. 14. The council shall have the authority to remove from office any elective officer of the city, for misconduct in office, incompetency to perform the duties required by their office and gross immorality, by a vote of a majority of the members elected to the common council, but no officer of said city shall be removed as aforesaid, until he shall have been served with a written notice, specifying the charges and reason for such removal, and such notice shall be given at least ten days prior to the day therein set for rehearing the same, and shall also state the place where said hearing shall take place, and the said officer shall have the full right to be heard in his own defense, and shall have the right to appeal to the circuit court of the county and the right of trial by jury, but said appeal shall not be taken after ten days have expired from the decision of the council.

Sec. 19. The council shall cause to be annually made up and entered on its journal not later than the first day of July of each year, an accurate estimate of all sums that are or may become chargeable to such city, and which should be paid within one year, and it shall order a levy sufficient, in its opinion, to pay the same.

Sec. 22. The council shall have full power to make and enforce ordinances for the regulation and control of the sale of all spirituous, vinous and malt liquors within the city, provide for the forfeiture, cancellation and annulment of any license for the violation of any condition of the bond given by any licensee, or for a violation of any ordinance regulating and controlling the sale of such liquors; to make and enforce ordinances determining the class, character and qualifications of licensees and their employees;

to impose a license for the sale of such liquors upon the licensee for the use of the city in excess of the amount required to be paid to the state for the same purpose.

When such license is granted by the council it shall take from the person licensed, a bond with approved security in a penalty of not less than three thousand five hundred dollars payable to the city of Logan and conditioned as prescribed by the constitution and the laws of the state of West Virginia. The council may provide for the punishment of such person, or persons, for the violation of any of the conditions of the said bond, and suit may be brought and maintained against any person, or persons, or their securities on such bond for the same object, by the same persons, in the same manner and with like effect as upon a bond taken under the laws mentioned; and also for any fines and costs that may be imposed by the mayor for any offenses against the city under its ordinances involving a breach of the conditions of such bond; but nothing contained in this act shall be construed to authorize the corporate authorities of said city to grant state license for the sale of spirituous liquors, wines, ale, beer or drinks of like nature within the corporate limits of said city without the consent and approval of the county court of Logan county.

*Provided, however,* that at each general city election the question of granting or refusing licenses for the sale of spirituous liquors, wine, porter, ale or beer and drinks of like nature, shall be submitted to the voters of the city; the persons voting in favor of granting such licenses shall have on their ballots, the words, printed or written, "for license" and those voting against the granting of such license shall have on their ballots the words, written or printed, "against license," and it shall be the duty of the ballot commissioners of said city to cause the said words to be printed on all ballots to be voted at said election; if three-fourths of the votes cast on this question be in favor of license, it shall be the duty of the council until the next general municipal election, to grant such license to proper persons applying therefor as provided herein, but if more than one-fourth of such votes so cast be opposed, no license shall be granted by the council of said city.

But in no event shall the council of said city grant or be required to grant such license without the consent and approval of the county court of Logan county, as hereinbefore provided.

The council of said city shall, if three-fourths of the votes cast

on the question of granting such liquor license be in favor of granting such license, grant not to exceed one license to sell, offer or expose for sale, spirituous liquors, wine, porter, ale or beer, or drinks of a like nature, for each one thousand persons resident in said city, or fraction over five hundred as shown by the last authorized census of the same; when any such license is granted by the council of said city, said council shall have the authority to impose, for the use of said city, a uniform tax upon such license at the rate of not less than one thousand nor more than three thousand dollars for each license so granted for each year.

Sec. 27. The treasurer of said city, before entering upon the discharge of his duties, shall execute a bond conditioned for the faithful performance by him of the duties of his office, and for the accounting for and paying over as required by law, all moneys which may come into his hands by virtue of his office, with surety satisfactory to the council, payable to the city of Logan, in a penalty of not less than three thousand dollars, nor more than fifteen thousand dollars, as the council may prescribe; he shall be the custodian of all moneys, bonds, notes, certificates and other evidence of indebtedness to the city, together with all valuable papers which may be placed in his hands by the council; he shall be chargeable with, and it shall be his duty to collect, the city taxes, levies, assessments, fines and penalties, under such regulations as may be prescribed by law and the ordinances of the city, and he shall have the same power and authority to distrain and sell therefor in like manner as the officer collecting the state and county taxes and levies; his compensation shall not exceed five per cent of the amount duly collected and accounted for; in case the collector shall fail to collect, account for and pay over all or any funds with which he may be chargeable belonging to the city according to the condition of his bond and the ordinances of the council, the city shall have the right in its corporate name to recover the same by action in the circuit court of Logan county, or where the sum does not exceed three hundred dollars, before a justice of the peace of the county of Logan, against the treasurer and his securities or any of them, or his or their personal representatives, upon giving ten days' notice in writing of any such motion or action.

The treasurer shall, on the last day of each month, file with the

recorder a sworn itemized statement showing his total collections, if any, and disbursements for said month; and he shall annually on or immediately before the first day of July, make such settlement with the council as the general laws of the state provide for sheriff's settlements with the county court; and upon completion of such settlement all orders surrendered by such treasurer shall be collected by the recorder in the presence of the council of said city by prefixing stamp, showing that the same have been paid, and said treasurer shall at any time, upon request of the council, make settlement of his accounts as such treasurer.

Sec. 28. It shall be the duty of the assessor to make an assessment of the property within said city, subject to taxation, substantially in the manner and form in which assessments are made by the assessor of the county and return the same to the council on or before the first day of June of each year, and for this purpose he shall have access to all public books and records of Logan county, and to all documents and papers in the hands of the county assessor, relating to assessments for state and county purposes without expense to the city and shall have all the powers conferred by law on county assessors. In case the assessor of the city shall discover any property subject to taxation which has not been listed by the county assessor, it shall be his duty to list the same and make report of the fact with a description of the property and its owner, to the county assessor, or it shall be the duty of the county assessor to list same for state and county purposes, and to make a proper valuation of the same and report its valuation to the assessor of the city. The assessor of the city shall list the dogs of the city with the names and owners thereof and return the list to the council; the council shall have power to make and enforce regulations respecting the listing and taxation of dogs within the city and provide for the impounding and killing, such as appear to have no owner or upon which the tax has not been paid, and have power to make and enforce all needful ordinances respecting the assessment of property; the assessor shall receive a compensation to be paid out of the city treasury of not less than twenty dollars nor more than ninety dollars for such services properly rendered, to be fixed by the council of said city.

Sec. 32. The council, except where it is otherwise herein provided, shall fix the salaries of all officers, employees and servants of the city.

Sec. 37. It shall be the duty of the solicitor to prepare, when directed by the council, all ordinances for said city, to represent the said city in all matters and proceedings in any court, in which the said city is interested, and counsel the said council when requested; he shall receive a compensation for his services, to be fixed by the council, not exceeding three hundred dollars per annum.

(House Bill No. 147)

## CHAPTER 89.

AN ACT creating the independent school district of Ridgeley, West Virginia.

(Passed February 23, 1909).

Sec.

1. Boundary line defined.
2. Property vested in board of education; board to consist of three commissioners; election.
3. Corporate powers of board.
4. Term of commissioners; vacancy; trustees.
5. President and secretary.
6. Salary of members and secretary.

Sec.

7. Powers of board as to establishment of schools.
8. Levy.
9. Rate of levy.
10. Appointment of teachers.
11. Election for establishment of independent school district; form of ballot.
12. Inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

Sec. 1. That in the event of a majority of the votes cast at an election to be held on the second Tuesday in May, one thousand nine hundred and ten, be in favor thereof, the following described territory in the county of Mineral, and in the district of Frankfort, shall after the results of such election are ascertained and declared to be the independent school district of Ridgeley, to-wit:

All that portion of Mineral county, lying north and east of the main line of the Western Maryland railroad's Cherry run extension, from the point where the same leaves the Potomac river on the west side of Knobley mountain, and passes by a tunnel under Knobley mountain and to where it crosses the Potomac river on the south side of Knobley mountain, shall constitute and be known as the "Independent School District of Ridgeley."

Sec. 2. The property, real and personal, within the Frankfort district of Mineral county, of which the newly created district has heretofore been a part, now vested in the board of education of said district, shall become the property of the board of education of the said new district and the board of education for said new district shall be governed by the same laws as boards of education of districts under the general education laws of the state, except only so far as otherwise provided by this act. The board of education of said district shall consist of three commissioners who shall be elected by the qualified voters residing within said Ridgeley district, at a special election to be held at the town of Ridgeley, in Mineral county, on the eighth day of June, one thousand nine hundred and ten, which election shall be conducted by the regular officers appointed for the holding of general elections in said territory. One commissioner shall be elected for four years and six months or until his successor is elected, at the general election in one thousand nine hundred and fourteen, and qualifies; one commissioner shall be elected to serve two years and six months or until the general election in November, one thousand nine hundred and twelve, when his successor shall be elected and qualify; one commissioner shall be elected for six months or until the general election in November, one thousand nine hundred and ten, when his successor shall be elected and qualify.

Sec. 3. Said commissioners shall constitute the board of education for said district and shall be a corporation by the name of the "Board of Education of the Independent School District of Ridgeley, West Virginia," and by that name may sue and be sued, plead and be impleaded, purchase, hold and grant so much estate, real and personal, as may be necessary for the purpose of the educational interests of said district; may make by-laws and pass regulations, not inconsistent with the laws of this state and do all things necessary and proper to be done, to advance the educational interests under the control of the said board of education.

Sec. 4. There shall be elected in said district every two years at the general election, one member of the said board, who shall hold his office for six years, commencing on the first day of July succeeding his election. The members of the said board shall continue therein until their successors shall be elected and qualified as provided by this act. Any vacancy in said board shall be filled by appointment of the board for the unexpired term, unless it be

for a period extending beyond the first day of July after the next general election, in which event such appointment shall be until the next general election, at which election a member shall be elected to fill such vacancy, and the person so elected shall enter upon the duties of his office on the first day of the month succeeding his election. The provisions of the general school law in relation to trustees shall not apply to said district.

Sec. 5. The said board of education shall, at their first meeting, or so soon thereafter as may be practicable, elect one of their number to act as president and another to act as secretary to said board, or may elect a secretary not a member of said board, who shall perform all the duties which are to be performed by the president and secretary as required by the general school law, which may not be inconsistent with this act.

Sec. 6. The members of said board and secretary thereof, in case said secretary is selected from outside the board, shall receive two dollars per day for each day actually employed in the line of their official duties as said board.

Sec. 7. The board of education of the independent school district of Ridgeley shall have power to establish an adequate number of primary schools, and a central high school, by such name as may be prescribed by said board, in which may be taught all the branches of education usually taught in college, and shall have power to admit to said schools pupils not residents of said district, upon payment of such tuition as they may prescribe.

Sec. 8. It shall be the duty of the board of education of said district to determine at their annual meeting, on the first Monday in July, as near as practicable, the amount of money necessary to be levied, in addition to all other available funds to carry on schools within said district for not less than six months during the succeeding year, but said board may, if it deems advisable, extend the term to more than six months for which amount said board shall levy a tax upon the property included in said district, and collect the same; and a lien is hereby declared to exist on the real estate taxable in said district, for all taxes levied thereon, and the said board shall carry into effect the provisions of this act, in the same manner as other tax is collected under the provisions of the general school laws of this state. The said school district shall not be entitled to receive its share of the state school fund for any

year until the board of education shall have first levied the tax above provided.

Sec. 9. The taxes raised in said district for school and building purposes shall never exceed the rate prescribed in the law relating to general free schools, except to pay bonded indebtedness, they may lay a levy not to exceed forty cents on the one hundred dollars for building fund, and the amount so levied and collected as aforesaid, shall not be used for any other purpose.

Sec. 10. The board of education shall appoint all teachers for public schools of any grade within the district, and fix their salaries at a meeting, held not later than the third Monday of August of any year. The salaries fixed and the teachers employed by the board of said district shall be recognized for such school year; but no person shall be employed as a teacher of any grade without having a satisfactory certificate obtained and issued as required by law in the examination of teachers for the public schools of the state. The teachers appointed shall be subject in all respects to the rules and regulations adopted by the board of education, and they may be removed by the board for incompetency, intemperance or gross immorality upon formal complaint, fully supported by proof. All appointments of teachers shall be in writing, signed by the president and secretary of said board of education.

Sec. 11. The election provided for in section one of this act shall be by ballot and those voting in favor of the establishment of said independent school district shall have printed or written on their tickets, "For Independent School District," and those voting against the establishment thereof, shall have written or printed on their tickets, the words, "Against Independent School District." The election shall be conducted and the results thereof ascertained and declared by the election officers to be appointed by the county commissioners of Mineral county, and all provisions of the election laws of this state shall be enforced and govern such election unless otherwise provided.

Sec. 12. All acts and parts of acts inconsistent with this act are hereby repealed.



(House Bill No. 232.)

## CHAPTER 90.

AN ACT to amend and re-enact section twenty-one, chapter twenty-seven, acts of one thousand nine hundred and eight, relating to the levy and to the supplementing of the school funds of certain districts.

(Passed February 26, 1909).

Sec.

21. Duty of board of education in laying levy if majority of ballots cast in district be in favor thereof; when; statement to set forth in detail.
- (a) Separate amounts due the building and teachers fund from every source.
- (b) The debts and demands owed by the district.
- (c) Statement to set forth other expenditures, etc.; to be posted; duties of board as to hearing objections to proposed levy;

Sec.

laying levy; rate; district containing incorporated city; if high school is maintained; increase of levy in district having outstanding bonds; if maximum levy is not sufficient; what then; when salaries of teachers fixed above minimum; supplementary aid for building and teachers' fund; balance of general school fund from per capita distribution to revert to said fund at close of year.

*Be it enacted by the Legislature of West Virginia:*

Sec. 21. If a majority of the ballots cast upon the question of laying a levy in the district or independent district have written or printed thereon "For School Levy," it shall be the duty of the board of education of such district or independent district at a meeting to be held on the second Tuesday in August, to ascertain the condition of the fiscal affairs of the district and make up an itemized statement thereof, which shall set forth in detail:

(a) The separate amounts due the building fund and teachers' fund of the district, and the amounts that will become due thereto and collectable during the current fiscal year, from every source, including the amount to be received from the general school fund, but excepting the amount that will be produced by the levy of taxes to be made for the year;

(b) The debts and demands owed by the district, and the debts and demands that will become due and payable during the current fiscal year, including interest on any indebtedness, funded or bonded or otherwise, distinguishing between those payable out of the building fund and those payable out of the teachers' fund;

(c) All other expenditures, under the several heads of expenditures, to be made and payable out of the funds of the district for

the current fiscal year, distinguishing between those payable out of the building fund and those payable out of the teachers' fund, and including the cost of collection of taxes and other claims, with proper allowances for delinquent taxes and contingencies. Said statement shall also set forth the separate amounts necessary to be raised for each of said funds by the levy of taxes for the current fiscal year, and the proposed rates of levy of taxes, in cents on each one hundred dollars of assessed value, on the taxable property of the district for each of said funds; and also the aggregate of the taxable property of the district, stating separately the assessed value of personal property, of real estate, and of the property assessed by the board of public works. A copy of such statement duly certified by the secretary of the board shall be posted in each postoffice in the district for at least eight days. The session shall then stand adjourned until the fourth Tuesday in August, at which time it shall convene; and it shall then be the duty of said board to hear and consider any objections made orally or in writing by the prosecuting attorney, by the state tax commissioner or his representative, or by any taxpayer of the county, to said estimate and proposed levy, or any item thereof. It shall be the duty of the board to enter an order of record showing the objection so made, setting forth the reasons and grounds for such objections. But the failure of any officer or taxpayer to offer objection as herein provided shall not preclude him from pursuing any legal remedy necessary to correct any levy laid by said board. After said objections have been made and heard, the board shall thereupon reconsider the proposed original estimate and proposed rate of levy; and if the objections thereto or any part thereof appear to be well taken, the board shall correct the same accordingly and it shall thereupon be approved, and when approved shall, with the order approving it, be entered by the secretary in the record book of proceedings, the board shall thereupon levy as many cents on each one hundred dollars of the assessed valuation of the property of the district, according to the last assessment thereof, as will produce the amount shown by the said statement necessary to be raised for the building fund, and levy in like manner the amount necessary, after deducting the sum receivable from the general school fund, for the teachers' fund to continue the schools in such district for the term of six months or for a longer term where such may be established by or according to law: *provided, first, that*

the levy for the building fund shall not exceed fifteen cents on each one hundred dollars of said valuation for the year one thousand nine hundred and eight, and shall not exceed twelve and one-half cents after that year; nor exceed twenty-five cents on each hundred dollars of said valuation for the teachers' fund; *provided, however,* that in any district which contains an incorporated city or town where a graded or high school is maintained, which is continued for a longer period than six months, the board of education shall have authority to lay a levy in addition to the levies above specified sufficient for all purposes to conduct the schools of said city or town for the term fixed; *provided, second,* that if such board of education in a city or independent school district of less than ten thousand population maintains a high school in such district, or maintains a high school in connection with one or more other districts, the board may levy for the support of said high school in any one year not to exceed ten cents on each one hundred dollars of said valuation; *provided, third,* that school districts and independent districts having outstanding bonds may increase the levies aforesaid by any amount sufficient to pay the interest on such bonds and the principal thereof in the time provided in the issue of such bonds, but the proceeds of such additional levy may be used for that purpose and no other; *provided, fourth,* that if said maximum levy of twenty-five cents for the teachers' fund shall not produce sufficient money, with the other sources of revenue, including any balance to the credit thereof in the hands of the treasurer and the amount of the general school fund apportioned to the district, to pay the salaries of the necessary number of teachers at the minimum rate of salary fixed by law, for the schools of the district for the term of six months, it shall be the duty of the state superintendent of free schools to deposit with the treasurer of the board of education, to the credit of the teachers' fund, a sufficient amount to make up such deficiency; and the state superintendent is authorized to withhold from the distribution made on the per capita basis a sufficient amount of the general school fund, not exceeding in any one year seventy-five thousand dollars for this purpose. If it shall appear to said state superintendent that a sufficient number of teachers of the proper grade for the schools of such district cannot be procured at the minimum rate of salary, owing to the payment of larger salaries in neighboring districts or elsewhere in the state, he may fix the

salaries of such teachers above the minimum, but not above salaries paid teachers of like grades in neighboring districts; *provided, fifth*, that if in any magisterial or independent district of the state a levy of twelve and one-half cents on the one hundred dollars for the building fund is not sufficient to meet all the outlay for necessary expenses for the school year, properly chargeable to the building fund, such as repairs, fuel, janitor service and institute per diem, and not including the purchase of land or the erection of new buildings, then it shall be the duty of the state superintendent to make requisition upon the auditor for a sufficient sum out of the general school fund, not exceeding fifteen thousand dollars in any one year, for the purpose of supplementing the building fund of districts entitled to such assistance. The state superintendent before making requisition on the auditor for the supplementary aid herein provided for, for the teachers' and the building fund, shall inform himself of the conditions existing in such districts as seek aid and shall require a financial statement and affidavits concerning the same from all boards of education asking for help.

Any balance of the general school fund withheld from the per capita distribution for such districts, as aforesaid, in any year, shall revert to said fund at the close of the year.

(House Bill No. 62.)

## CHAPTER 91.

AN ACT to amend and re-enact section two hundred and fifteen of chapter twenty-seven of the acts of the legislature of West Virginia, passed at the special session of one thousand nine hundred and eight.

(Passed February 23, 1909).

Sec. 215. Branches to be taught in Bluefield colored institute; provisions of code relative to free in-

struction; duty of state superintendent of free schools.

*Be it enacted by the Legislature of West Virginia:*

That section two hundred and fifteen of chapter twenty-seven,

of the acts of the legislature of West Virginia, passed at the special session of one thousand nine hundred and eight, be amended and re-enacted so as to read as follows:

Sec. 215. There shall be taught in said school such branches of learning as are taught in the preparatory department of the West Virginia university and in the normal schools of this state, but no student shall receive instruction free of tuition in any of the branches here designated, except as provided in section one hundred and seventy-nine of chapter forty-five of the code of West Virginia, and as to such as are taught free in the preparatory department of the university of West Virginia.

The state superintendent of free schools shall prepare suitable diplomas to be granted to the students of the normal department of said school, who have completed the course of study and discipline prescribed by said regents, which diploma hereafter issued shall be equivalent in all respects to a first grade certificate for a period of five years.

#### SENATE JOINT RESOLUTION NO. 1.

(Adopted February 10, 1909.)

Proposing an amendment to section four or article four of the constitution of the state of West Virginia.

*Resolved by the Legislature of West Virginia, two-thirds of all the members elected to each house agreeing thereto:*

That section four of article four of the constitution of West Virginia be amended so as to read as follows:

Sec. 4, Art. 4. No person except a citizen entitled to vote shall, except as hereinafter provided, be elected or appointed to any state, county or municipal office; but the governor and judges must have attained the age of thirty, and the attorney general and senators the age of twenty-five years at the beginning of their respective terms of service; and must have been a citizen of the state for five years next preceding their election or appointment, or be a citizen at the time this constitution goes into operation, *provided, however*, that a female citizen of the state who has attained the age of

twenty-one years and who has resided within the state for the period of not less than five years preceding her appointment, may be appointed a member of the board of regents or other administrative body, or any educational, humane or penal institution of the state, wherein female persons are educated, cared for or confined, and may be commissioned a notary public, and may be appointed inspector of labor, deputy clerk of the supreme court of appeals, and of the circuit, county and other courts of this state.

SENATE JOINT RESOLUTION NO. 3.

(Adopted January 27, 1909.)

Relating to Berkeley Springs.

WHEREAS, The legislature of West Virginia, by an act passed on the twenty-seventh day of March, one thousand eight hundred and eighty-two, amended and re-enacted chapter one hundred and forty-five of the acts of one thousand eight hundred and seventy-two entitled, "An act for the better government of the Berkeley Springs in the county of Morgan; and

WHEREAS, The legislature of West Virginia by a subsequent act passed on the seventh day of February, of the acts of one thousand nine hundred and one, entitled, "An act to repeal chapter two hundred and two of the acts of one thousand eight hundred and eighty-two, and to provide for the lease or sale of the public property known as Berkeley Springs;" and

WHEREAS, Under the last above mentioned act the following provision was inserted in section three thereof: "The present trustees of Berkeley Springs shall surrender and deliver to the said Berkeley Springs board hereby created, or to such persons as it may designate, as soon as this act shall take effect, all the property under their management and control, and all books, papers and records pertaining to such property, and the said Berkeley Springs board shall, until such sale may be made and confirmed, as hereinafter provided, have all rights, privileges and powers, and perform all the duties vested in or required to be done by the present trustees, by chapter two hundred and two of the acts of one thou-

said eight hundred and eighty-two, and such additional rights, privileges and powers as are conferred by this act;" and

WHEREAS, In the act of the legislature passed on the twenty-seventh day of March, one thousand eight hundred and eighty-two, is the following section, it being section eight of said act, is made part thereof: "The said board of trustees shall, on or before the first day of November, one thousand eight hundred and eighty-two, and every two years thereafter, make report to the governor, giving a full and complete statement, sworn to by the president and treasurer of the board, of all moneys received and disbursed by them, said report to be accompanied by certified copies of all vouchers and papers connected therewith, and other matter the said board or the governor may deem necessary or pertinent. And the governor shall transmit said report to the legislature at its next succeeding session;" and

WHEREAS, It appears from a report of the secretary of state, that no report has been made, or that no report or reports of the Berkeley Springs board can be found on file in his office; and

WHEREAS, Said Berkeley Springs board did, on the first day of June, nineteen hundred and one, make a certain deed of lease of said state property to one C. P. Jack and one A. R. Unger; and

WHEREAS, C. P. Jack is insolvent and a non-resident of the state, and A. R. Unger, having made an assignment to F. W. Brown for the benefit of his creditors, and said A. R. Unger having since making said assignment departed this life; therefore be it

*Resolved by the Legislature of West Virginia:*

The the said Berkeley Springs board do report to this body within fifteen days from the passage of this resolution:

*First*—The date of the deed of lease made to C. P. Jack and A. R. Unger, and the terms thereof.

*Second*—The amount of rental paid to said Berkeley Springs board for the state property, and for what years.

*Third*—The amount of revenue derived from said lease by the lessees.

*Fourth*—The amount of money expended by C. P. Jack and A. R. Unger on the improvement of the state property under their control.

*Fifth*—Whether or not the lessees have complied with the requirements of said lease.

*Sixth*—The condition the state property is now in.

*Seventh*—Whether or not the lessees are now solvent and alive and whether they are personally managing the state property.

*Eighth*—If the lessees are not managing the state property who is, and under what authority.

*Ninth*—A copy of all reports made by the Berkeley Springs board as provided by the acts of one thousand eight hundred and eighty-two and one thousand nine hundred and one.

*Tenth*—To transmit to this body all books, papers, vouchers and everything in their possession relating to said state property at Berkeley Springs, and any and all information in their possession that they may have obtained in their different meetings, or otherwise.

The clerk of the senate is hereby directed to send a copy of this resolution to the president of said Berkeley Springs board.

#### SENATE JOINT RESOLUTION NO. 9.

(Adopted February 26, 1909.)

Urging the congress of the United State to establish a national bureau of mines.

*Resolved*, That the legislature of West Virginia again urges upon the congress of the United States the prompt establishment of a national bureau of mines.

The frequency of the recurring disasters and the increasing lists of fatal accidents in the best equipped mines of the country, in spite of the extra precautions taken and warnings from the investigations by the government during the present year, but serve to illustrate the necessity of having the continuous work of a well organized national bureau of mines, the investigations of which will aid the states and the miners in adpoting and carrying measures looking to greater safety.

*Resolved*, That copies of this resolution be sent to the senators and representatives at Washington from West Virginia, and that



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they are respectfully requested to aid in securing the prompt passage of the pending bill looking to the establishment of such a bureau.

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SENATE JOINT RESOLUTION NO. 11.

(Adopted February 26, 1909.)

Authorizing and requesting the governor to appoint a commission to revise the printing laws, and to inquire into the advisability of the establishment of a state printing plant.

*Resolved by the Legislature of West Virginia:*

That the governor be and he is hereby authorized and requested to appoint a commission of five members, three of whom shall be practical printers, to revise the printing laws of this state, and to inquire into the advisability of the establishment of a state printing plant.

Said commission shall ascertain the cost of the state printing in the various states, where such information is obtainable, collect information as to the cost of printing in the various departments and institutions of this state, and report their findings to the governor, to be by him transmitted to the next session of the legislature.

The members of said commission shall receive all actual expenses incurred in the execution of said investigation, together with such per diem as may be allowed by the governor; *provided*, that the total expenses of said commission shall not exceed the sum of one thousand dollars, and shall be allowed and paid on requisitions approved by the governor.

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SENATE SUBSTITUTE FOR HOUSE JOINT RESOLUTION  
NO. 15.

(Adopted February 3, 1909.)

Raising a committee to investigate the charges made against the management of the West Virginia penitentiary. .

WHEREAS. Serious charges of corrupt practices, wrong doing and injury to the state have been made by a member of the legislature concerning the management and conduct of the West Virginia penitentiary, and charges and assertions of the same nature have been made to the governor; therefore, be it

*Resolved by the Legislature of West Virginia:*

That a legislative committee of five be appointed and selected to investigate and report upon said charges. Said committee to be composed of five members, two to be selected from the senate, to be appointed by the president thereof, and three to be selected from the house of delegates, to be appointed by the speaker thereof; and of the two selected from the senate there shall be one selected from each political party, and of the three selected from the house of delegates not more than two shall be selected from the same political party.

It shall be the duty of this committee immediately to proceed to investigate the charges above referred to and at the very earliest day practicable report to the legislature now in session, and said report shall be made not later than February eighteenth, one thousand nine hundred and nine. Said committee for the purpose of investigating said charges and formulating its report shall hold hearings, examine witnesses and do such other things as it may deem pertinent to carry out the object of this resolution. Said committee shall have power and authority to employ stenographers, and such clerical assistants as it may deem necessary, to administer oaths, summon witnesses and compel their attendance, and compel the production of documents and of all kinds and manner of evidence.

The members of said committee shall have their actual expenses paid, if any incurred, and all the expenses growing out of such investigation; and the said expenses are to be divided equally between the two houses and the warrants therefor are to be drawn by the sergeant-at-arms of the house and the clerk of the senate, respectively, payable out of the contingent fund of the two houses, and the auditor is hereby authorized and directed to pay the same.

## SENATE JOINT RESOLUTION NO. 17.

(Adopted February 26, 1909.)

Authorizing the secretary of state and state librarian to furnish the state department of archives and history certain acts of the legislature, supreme court of appeals reports, etc.

WHEREAS, Almost daily calls are made in the state department of archives and history for the acts of the legislature, reports of the supreme court of appeals; and

WHEREAS, The said department does not have complete sets of these publications, from the formation of the state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the secretary of state may be, and is hereby authorized to complete in duplicate the acts of the legislature, so far as he can without reprinting, for the said department; that he transfer house and senate journals thereto, and that the state librarian be and is hereby authorized to complete one set of reports of the supreme court of appeals for the library in said state department of archives and history.

## SENATE JOINT RESOLUTION NO. 18.

(Adopted February 23, 1909.)

Relating to agricultural experimental station.

WHEREAS, The congress of the United States in its wisdom has seen fit to appropriate the sum of fifteen thousand dollars annually for the further complete endowment and maintenance of an agricultural experiment station in this state, to be applied annually to pay the necessary expenses of conducting original research for experiments bearing directly on the agricultural industry of the United States, by an act of congress passed March sixteenth, one thousand nine hundred and six, entitled, "An act to provide an in-

creased appropriation\* for agricultural experimental stations, and regulating the exepenses thereof;" and

WHEREAS, The West Virginia university by an act of the legislature entitled, "An act for the regulation of the West Virginia Agriculeural College," passed February eighteenth, one thousand eight hundred and sixty-seven, and other acts of the legislature amendatory thereof as to the institutions receiving the benefits, grants and appropriations of the congress of the United States for the establishment and maintenance of agricultural colleges;" and

WHEREAS, In accordance with the provisions of section two of the act of congress approved March sixteenth, one thousand nine hundred and six, furthermore, the governor of West Virginia has accepted for the West Virginia university the congressional appropriation for the further, more complete endowment, to the support and maintenance of an agricultural experimental station in this state; and,

WHEREAS, The board of regents of the West Virginia university in accordance with section one of the congressional act approved March second, one thousand eight hundred and eighty- seven, have established a department of the West Virginia university, known as the West Virginia agricultural experimental station, which is now in full working order, and is issuing bulletins and conducting investigations as contemplated in the aforementioned congressional act; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the state of West Virginia hereby assents to and accepts from the government of the United States, grants of money authorized by the said acts of congress approved March sixteenth, one thousand nine hundred and six, and assents to the propositions and conditons of said grants. The bulletins and reports necessary to be published in carrying out the purposes of the said act of congress, shall be publishel at the expense of the state in such additions and numbers as the mailing list of the said experimental station shall indicate as being required, and shall be distributed by the station to the farmers and citizens of the state entitled to the same.

## SENATE JOINT RESOLUTION NO. 19.

(Adopted February 26, 1909.)

Appointing a committee to investigate and prevent the pollution of the New and Kanawha rivers, in the state of West Virginia.

WHEREAS, The New and Kanawha rivers are important rivers of southern West Virginia, and said rivers flow through the state of West Virginia for a distance of about two hundred miles, and said rivers flow through the most populous and fertile sections of the state. That the New river flows from the state of Virginia into and through the counties of Mercer, Summers, Raleigh and Fayette, in said state of West Virginia; that the Kanawha river flows through the counties of Kanawha, Putnam and Mason, in said state of West Virginia. That practically all of the watershed of the whole central and eastern part of the state of West Virginia drains into the said New and Kanawha rivers. That said portions of the state of West Virginia are developing most rapidly and said rivers furnish the water supply for one of the great mining sections of the state of West Virginia. That said rivers flow from the county of Giles, in the state of Virginia, into the Ohio river at Point Pleasant, in the county of Mason, in said state of West Virginia. That said rivers flow through the great New and Kanawha coal fields, which said coal fields exercise a most important part upon the commercial and industrial affairs of the country. That said rivers in their normal conditions are perfectly pure, the waters clear and fit for all purposes of commercial and domestic use. That along said rivers are a number of large cities and towns most important in their commercial bearing upon the industrial and commercial affairs of the state, and that the great populations living upon the banks of said rivers, and those engaged in commerce along said rivers are dependent upon said waters for their daily use; and,

WHEREAS, Notwithstanding that these rivers are vitally important to the great populations living on their banks, a number of ore producers in the state of Virginia have, without regard for those engaged in commerce along the said rivers, and without regard for the great populations living in West Virginia who are dependent upon said rivers for water in its various uses, have thrown

into said New river, in the county of Giles, in the state of Virginia, and are continuing so to do, vast quantities of refuse, debris and ore wash and have practically destroyed the rivers for the purposes for which they were intended; and,

WHEREAS, The waters of the rivers have been rendered so impure that they cannot be used for those engaged in commerce along the rivers for domestic purposes in the ordinary course of drinking and washing, and said rivers are so filled with mud and iron ore that the same are utterly unfit for drinking and unfit for steam making, and said ore washing pollutes the said New and Kanawha rivers, as well as the Ohio river, and said action of the ore producers of the state of Virginia is entirely unnecessary and without precedence and is wrongful and utterly injurious to the people of this state, and is practically making a foul and muddy sewer of said New and Kanawha rivers; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the governor of this state appoint a commission of three, whose duty it shall be to investigate, employ counsel and other agents to cause such injury to be discontinued, and take such steps as they may deem best to protect the interests and welfare of the people of the state in the matter herein above set out. The said commission shall convene on the call of the governor, who shall be *ex officio* chairman of the same, and said commission shall receive no compensation for the services rendered but shall receive the necessary traveling expenses, but said commission shall have the right to expend the sum of one thousand dollars in the employment of agents and attorneys for said purposes. Any vacancies upon said board by death or resignation shall be filled by the governor, and reports shall be made to him of all their proceedings and doings under this resolution.

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HOUSE JOINT RESOLUTION NO. 1.

(Adopted January 19, 1909.)

Authorizing the auditor to draw his warrants on the treasurer for the per diem and mileage of the members of the legislature and the per diem of the officers, attaches of the senate and house of delegates.

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*Resolved by the Legislature of West Virginia:*

That the auditor is hereby authorized to issue his warrants on the treasury for such amounts as are, or may become due to the several members, officers and attaches of the senate and house of delegates for their per diem upon the proper requisition of the clerk of the senate and sergeant-at-arms of the house, respectively, and the said auditor is further authorized to issue his warrant for mileage of the members of the two houses as soon as said mileage is ascertained and fixed upon the proper requisition being presented to him therefor.

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HOUSE JOINT RESOLUTION NO. 2.

(Adopted January 21, 1909.)

Approving the application of the board of regents of the West Virginia university for admission to the rights and privileges of the Carnegie Foundation for the Advancement of Teaching.

WHEREAS, Mr. Andrew Carnegie has established a foundation known as the Carnegie Foundation for the Advancement of Teaching; and

WHEREAS, He has made its benefits available for state universities, upon the application of their proper authorities, with the approval of their respective legislatures and governors; and

WHEREAS, The board of regents of the West Virginia university by an order passed on October seventeenth, one thousand nine hundred and eight, has made application for the admission of the university to the rights and privileges of the foundation; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the legislature of West Virginia hereby approves of the application of the board of regents for the admission of the West Virginia university to the rights and privileges of the Carnegie Foundation for the Advancement of Teaching.

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**HOUSE JOINT RESOLUTION NO. 13.**

(Adopted February 1, 1909.)

Authorizing and empowering the governor to appoint a committee to prepare a municipal code for the state of West Virginia.

WHEREAS, A great portion of the time of the legislature of West Virginia is occupied in considering and passing bills incorporating municipalities within said state, and making changes in charters heretofore granted; and

WHEREAS, The time so employed could be profitably spent in the consideration of legislation affecting the interests of the people of said state as a whole, it is hereby

*Resolved by the Legislature of the State of West Virginia:*

That the governor of said state be, and he hereby is authorized and empowered, within sixty days from the date of adjournment of the present session of said legislature, to appoint a committee consisting of three, no more than two of whom shall be of the same political party, to prepare a municipal code for the state of West Virginia, which said committee shall report the result of its work to the next regular session of the legislature, or to the governor, if sooner completed.

The members of said committee shall receive as compensation for the services rendered the sum of ten dollars per day each and necessary expenses connected therewith, which amount shall be paid out of the treasury of the state upon warrants drawn by the auditor thereof; the auditor is hereby authorized and directed to draw his warrants for such amounts as shall be certified to him by the chairman of the committee to be appointed, approved in writing by the governor.

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**HOUSE JOINT RESOLUTION NO. 14.**

(Adopted January 22, 1909.)

Authorizing the sergeant-at-arms of the house and the clerk of the senate to issue warrants to certain attaches.



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*Resolved by the Legislature of West Virginia:*

That the sergeant-at-arms of the house and the clerk of the senate are hereby directed and authorized to draw warrants upon the auditor for the following attaches: William Hall, Elvin Whittington, Columbus Blunt, W. Wade, Bob Clay, Thomas Hale, John Brown, William Brown, E. G. Archibald and M. Light, special janitor force for the house and the senate; salary three dollars per day. The sergeant-at-arms of the house to draw warrants for one-half, or one dollar and fifty cents per day, and the clerk of the senate to draw his warrants for the other half, or one dollar and fifty cents per day, on demand of attaches.

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HOUSE JOINT RESOLUTION NO. 17.

(Adopted January 27, 1909.)

Authorizing the sergeant-at-arms of the house and the clerk of the senate to issue warrants to certain attaches.

*Resolved by the Legislature of West Virginia:*

That the sergeant-at-arms of the house and the clerk of the senate are hereby directed and authorized to draw warrants upon the auditor for the following attaches:

William Hall, Elvin Whittington, Columbus Blunt, W. Wade, Bob Clay, Thomas Hale, John Brown, William Brown, E. G. Archibald and M. Light, special janitor force for the house and senate; salary three dollars per day.

Sergeant-at-arms of the house to draw warrants for one-half or one dollar and fifty cents per day and the clerk of the senate to draw warrants for the other half or one dollar and fifty cents per day out of the contingent fund of the respective houses on demand of the attaches.

## SUBSTITUTE HOUSE JOINT RESOLUTION NO. 19.

(Adopted February 24, 1909.)

Proposing an amendment to the constitution of the state of West Virginia.

*Resolved by the Legislature of West Virginia, two-thirds of all the members elected to each house, agreeing thereto:*

That the following amendment to the constitution of this state be and the same is hereby proposed:

1. The supreme court of appeals shall consist of seven judges. The judges of said court in office when this amendment shall take effect shall continue in office until their terms shall expire, and the legislature shall provide for the election of two additional judges thereof at the first general election held after the adoption hereof, whose terms of office shall begin on the first day of January, one thousand nine hundred and thirteen, and the governor shall, as for a vacancy, appoint two judges of said court to hold office until the first day of January, one thousand nine hundred and thirteen. The two additional judges elected in the year one thousand nine hundred and twelve shall hold their respective offices for the period of eight years, and thereafter their successors shall be elected for terms of twelve years.

2. The judges thereof shall annually elect from their number a chief justice. The court may sit *en banc* or in not more than two divisions, to be designated as part one and part two, and, if in divisions, the chief justice shall assign three of the judges to each part. The judges shall be competent to sit in either division and the chief justice shall annually assign three of them to each part, and, at the expiration of each year, so re-assign them that not more than two of those who sat in one part shall sit in, or participate in the work of that division in the succeeding year; *provided, however*, that in the absence of one or more of the judges of either part, the chief justice may temporarily transfer to it a member or members of the other part. Each part shall have power, under such rules, regulations and limitations as the whole court may prescribe, to hear causes and render decisions as effectual and binding in all respects as if rendered by the entire court; *provided*, that no decision shall be rendered without the concurrence therein of three

judges. The chief justice shall apportion the business of the court between the parts, and may, in his discretion, order any cause pending before the court to be heard and decided by the court *en banc*, and, in any case heard *en banc*, the concurrence of four judges shall be necessary to a decision. The chief justice may sit and act in either part, and shall preside when so sitting, but the judges assigned to each part shall select one of their number as presiding judge.

#### SENATE CONCURRENT RESOLUTION NO. 1.

(Adopted January 14, 1909.)

Raising a joint committee to wait upon the governor.

*Resolved by the Senate of West Virginia, the House of Delegates concurring therein:*

That the two houses concur in the appointment of a select committee of five, composed of two members of the senate appointed by the president, and three members of the house of delegates, appointed by the speaker, to jointly wait upon the governor and inform him that the legislature is organized, with a quorum of each house present, and is prepared to receive any communication he may be pleased to make.

#### SENATE CONCURRENT RESOLUTION NO. 2.

Authorizing and directing the payment of the expenses incurred by the joint special committee that investigated the affairs at the penitentiary.

*Resolved,* That the items of expense incurred by the joint special committee to investigate the affairs at the penitentiary, as shown by the report made, be paid out of the contingent funds of the two houses, divided equally between them, upon warrants drawn upon the auditor by the clerk of the senate and the sergeant-at-arms of the house of delegates, respectively.

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HOUSE CONCURRENT RESOLUTION NO. 3.

(Adopted February 19, 1909.)

Relating to the suit of the commonwealth of Virginia vs. the state of West Virginia.

*Resolved*, That the senate and the house of delegates do meet in joint executive session at the hour of eight o'clock, P. M., on Friday, February nineteenth, in the hall of the house of delegates for the purpose of hearing a report from the attorney general of West Virginia and of such other counsel in said suit as may be present, of the progress made therein, and to give to the members of the two bodies such further information as they may deem proper or as any member of either of said houses may ask.

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HOUSE CONCURRENT RESOLUTION NO. 4.

(Adopted February 26, 1909.)

Providing for a committee of the two houses to jointly wait on the governor and inform him that the legislature is ready to adjourn *sine die*.

*Resolved, by the House of Delegates, the Senate concurring therein:*

That a committee be appointed, consisting of two members on the part of the senate and three on the part of the house, to wait jointly upon the governor, and inform him that the legislature having completed the work of the session of one thousand nine hundred and nine, is ready to adjourn *sine die*, and ask him if he has any further communication to make.

## SENATE CONCURRENT RESOLUTION NO. 3.

(Adopted February 25, 1909.)

Providing for the printing and distribution of advance copies of the acts of this session, and the distribution of other public documents.

*Resolved by the Legislature of West Virginia:*

That the chief clerks of the two houses are hereby directed to have printed by the public printer two thousand advance copies of the acts of this session, with full table of contents, for distribution among the members of the legislature and public officials. Said public printer shall print and deliver said advance copies to the said clerks within forty days after the adjournment of this session. Upon receipt of the same the clerks shall, without delay, forward by mail or express to each member of the legislature at least ten copies thereof; and the sum of two hundred dollars out of the contingent fund of the house of delegates and the sum of one hundred dollars out of the contingent fund of the senate is hereby appropriated, and is directed to be paid upon the warrant of the proper officials of the respective houses, to pay the postage or expressage thereon. In the event the public printer shall be unable, for any cause, to print and deliver said advance copies within the time required by this resolution, then the said clerks are directed and required to have the same done elsewhere; and to pay for any such printing which it may be necessary for said clerks to have done there is hereby appropriated the sum of three hundred dollars out of the contingent fund of the house of delegates, and two hundred dollars out of the contingent fund of the senate, or so much thereof as may be necessary, the same to be paid upon the warrant of the proper officer of the respective houses.

There shall also be sent to each member five copies of the reports and hearings of the mine investigating committee and five copies of the report of the joint special committee to visit public institutions.

For the work provided for in this resolution said clerks shall be allowed forty-five days; the per diem to be paid out of the contingent fund of the senate and house, respectively, upon proper warrants to be drawn therefor, and the auditor is authorized and directed to pay the same.

## APPENDIX TO

House Bill No. 342, passed February 26th, 1909. In effect from passage.

(Note by the Clerk of the House of Delegates.)

“The following items were included in House Bill No. 342, entitled ‘A Bill making appropriations of public money to pay general charges upon the treasury,’ as originally passed by the legislature, which items were vetoed by the governor. The veto of the item, ‘To pay Mrs. Maud May, executrix and devisee, widow of the late Attorney General, Clark W. May deceased, the salary for the balance of the year in which said Clark W. May died \$2,080.00,’ was declared ineffective by the supreme court of appeals, May 4th, 1909.”

*Marshall College.*

	1909.	1910.
Steel cases for library .....	\$ 300.00	\$ 200.00
Six acres of land on Fifth Ave., provided the principal of the institution raise the remainder necessary to purchase the same..	10,000.00	.....
Stone or concrete steps front and rear of dormitory .....	200.00	.....
Paving rear driveway .....	450.00	450.00
Fencing .....	300.00	300.00

*Fairmont Normal School.*

Extra fence around grounds.....	\$ 1,200.00
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*West Liberty Normal School.*

Purchase of additional land .....	\$ 2,000.00	.....
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*Bluefield Colored Institute.*

For additional land, five acres, ten houses, subject to approval of board of control...	\$ 3,000.00	\$ 3,000.00
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*Hilltop Seminary and College.*

	1909.	1910.
To assist in the erection of a school building at Hilltop, Fayette county, W. Va., to be paid to the trustees of said school on the approval of the state board of control..	.....	\$10,000.00

*West Virginia Asylum.*

For building for male patients .....	\$12,000.00	.....
For fence .....	1,000.00	\$ 1,000.00

*Kings Daughters Hospital.*

Kings Daughters hospital for the treatment and care of laborers and any others who may become a public charge, said amount to be paid upon the approval of the board of health of Berkeley county as may be prescribed by the state board of health.....	.....	5,000.00
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*Supplementary School Fund.*

For supplementary aid for building fund...\$15,000.00	.....	
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*Salaries of Clerks.*

For carrying out the provisions of article twelve of section two of the constitution, to be paid out of the general school fund..\$	500.00	\$ 500.00
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*Office of Public Roads.*

For demonstrating use of road drag.....	.....	\$ 3,000.00
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*Miscellaneous.*

Sadie Midelburg, five days extension extraordinary session, 1908 .....	\$ 30.00	.....
B. E. Sayre, ten days extension, per resolution, extra session, 1908 .....	60.00	.....

	1909.	1910.
Raynor White for ten days extension per resolution, extra session, 1908 .....	20.00	.....
D. G. Thompson, N. P., for swearing in eighty-seven delegates at 50 cents each...	43.50	.....
W. E. Hill, clerk judiciary committee of the senate, 1908, for balance due on per diem, thirty-six days .....	72.00	.....
F. W. Stevens, clerk judiciary committee of the senate, 1908, balance due on per diem, thirty-six days .....	72.00	.....
H. N. Worden for ten days extension as sergeant-at-arms of the house of delegates, extra session, 1908.....	50.00	.....
Helen L. Kaufman, stenographer to the president, extra per diem for thirty-six days at \$2.00 per day for the extra session, 1908 .....	72.00	.....
L. A. Petty, clerk of the finance committee of the senate, 1908, for balance due per diem, thirty-six days at \$2.00 per day....	72.00	.....
C. E. Kimbrough, extra per diem for thirty-six days at \$2.00 per day, extra session, 1908 .....	72.00	.....
Denver H. Graham, journal page extra session, 1908, balance due on per diem for thirty-six days at \$2.00 per day.....	72.00	.....
C. V. Gough, door-keeper of the senate, extra session, 1908, for extra per diem for thirty-six days at \$2.00 per day, per resolution of senate .....	72.00	.....
Ollie K. Barnes, extra per diem as stenographer of the senate, extra session, 1908, thirty-six days at \$2.00 per day.....	72.00	.....
A. D. Butts, printing clerk, extra per diem for thirty-six days at \$2.00 per day, for extra session, 1908 .....	72.00	.....
W. C. Hedrick, printing clerk, extra per diem for thirty-six days at \$2.00 per day for extra session of 1908 .....	72.00	.....



	1909.	1910.
H. M. O'Blenniss, assistant printing clerk, extra per diem for thirty-six days at \$2.00 per day for extra session, 1908.....	72.00	.....
Lewis E. Schrader, minute clerk, extra per diem for thirty-six days at \$2.00 per day for extra session of 1908 .....	72.00	.....
Homer Gray, minute clerk, extra per diem for thirty-six days at \$2.00 per day for extra session of 1908 .....	72.00	.....
I. A. Lytle, stenographer, extra per diem for thirty-six days at \$2.00 per day, for extra session, 1908 .....	72.00	.....
E. C. Frame, extra per diem for thirty-six days at \$2.00 for extra session, 1908.....	72.00	.....
Hugh L. Hammond, engrossing clerk, for thirty-six days at \$2.00 per day for extra session, 1908 .....	72.00	.....
H. W. B. Mullens, engrossing clerk, per diem for thirty-six days at \$2.00 per day extra session, 1908 .....	72.00	.....
John T. Harris, clerk of the senate, extra per diem for thirty-six days at \$2.00 for extra session, 1908 .....	72.00	.....
R. M. Brown, voucher clerk, extra per diem for thirty-six days at \$2.00 per day for extra session, 1908 .....	72.00	.....
Winnie L. Trask, stenographer to the judiciary committee, extra per diem for thirty-six days at \$2.00 for extra session, 1908 .....	72.00	.....
Fred Chenowith, extra per diem for thirty-six days at \$2.00 per day for extra session, 1908 .....	72.00	.....
C. A. Stalnaker, assistant door-keeper, extra per diem for thirty-six days at \$2.00 per day for extra session, 1908.....	72.00	.....
Philip G. Walker, balance due on per diem thirty-six days at \$2.00 per day for extra session of 1908 .....	72.00	.....

	1909.	1910.
Hattie C. Laughorn, stenographer to the finance committee, extra per diem for thirty-six days at \$2.00, for extra session of 1908 .....	72.00	.....
To pay Mrs. Maud May, executrix and devisee widow of the late Attorney General Clark W. May, deceased, the salary for the balance of the year in which said Clark W. May died .....	2,080.00	.....
Refunding for teachers' salaries of Harris district, Wood county, to be paid out of the general school fund .....	600.00	.....
Arthur J. Thompson, assistant warrant clerk and book-keeper of the senate, 1908, to balance due on per diem, thirty-six days.	72.00	.....

SHERIFFS OF WEST VIRGINIA.

FOR THE TERM OF FOUR YEARS, BEGINNING JANUARY 1, 1909.

COUNTIES.	NAMES.	ADDRESSES.
Barbour	Wm. B. Corder	Phillippi.
Berkeley	E. B. Kittering	Martinsburg.
Boone	Sidney White	Madison.
Braxton	B. C. McNutt	Sutton.
Brooke	C. D. Kyle	Wellsburg.
Cabell	I. J. Harshbarger	Huntington.
Calhoun	C. A. Jarvis	Grantsville.
Clay	L. D. Hyer	Clay.
Doddridge	J. E. Trauer	West Union.
Fayette	R. H. Dickinson	Fayetteville.
Gilmer	J. B. Vanhorn	Glenville.
Grant	O. M. Smith	Petersburg.
Greenbrier	T. H. Jarrett	Lewisburg.
Hampshire	A. L. Pugh	Romney.
Hancock	Robert R. Nobbs	New Cumberland.
Hardy	John H. McWhorton	Moorefield.
Harrison	Marshall J. Francis	Clarksburg.
Jackson	W. L. McCowan	Ripley.
Jefferson	Charles D. Wysona	Shepherdstown.
Kanawha	S. P. Smith	Charleston.
Lewis	P. G. Alfred	Weston.
Lincoln	Joel Holley	Hamlin.
Logan	Jas W. Chambers	Logan.
Marion	Geo. E. Amos	Fairmont.
Marshall	J. F. Alley	Moundsville.
Mason	John F. Austin	Pt. Pleasant.
Mercer	J. J. Ellison	Princeton.
Mineral	L. O. Davis	Keyser.
Mingo	W. A. Hurst	Williamson.
Nonongalia	Wm. H. Braud	Morgantown.
Monroe	J. R. Johnson	Union.
Morgan	Jos. T. Havermale	Berkeley Springs.
McDowell	E. T. Sprinkle	Welch.
Nicholas	David McQueen	Summersville.
Ohio	William M. Clemans	Wheeling.
Pendleton	I. N. Ruddle	Franklin.
Pleasants	W. E. Clavis	St. Marys.
Pocahontas	J. H. Buzzard	Marlinton.
Preston	Chas. Spindler	Kingwood.
Putnam	W. S. Barr	Winfield.
Raleigh	C. V. Cottle	Beckley.
Randolph	Thaddeus Pritt	Elkins.
Ritchie	John Hulderman	Harrisville.
Roane	A. G. Hinzman	Spencer.
Summers	G. W. Wiseman	Hinton.
Taylor	O. A. Hefner	Grafton.
Tucker	J. F. Repair	Parsons.
Tyler	Will E. Long	Middlebourne.
Upshur	C. E. Hiner	Buckhannon.
Wayne	Sam J. Crum	Wayne.
Webster	C. W. Morton	Webster Springs.
Wetzel	Justice Eakin	New Martinsville.
Wirt	C. H. Baumgarner	Elizabeth.
Wood	W. B. Kinchloe	Parkersburg.
Wyoming	John Ball	Pineville.

**PROSECUTING ATTORNEYS.**  
FOR THE TERM OF FOUR YEARS, BEGINNING JANUARY 1, 1909.

COUNTIES.	NAMES.	ADDRESSES.
Barbour .....	Harry H. Byrer .....	Philippi.
Berkeley .....	William B. Noll .....	Martinsburg.
Boone .....	C. L. Estep .....	Madison.
Braxton .....	Cary C. Hines .....	Sutton.
Brooke .....	R. L. Ramsey .....	Wellsburg.
Cabell .....	Jean F. Smith .....	Huntington.
Calhoun .....	A. G. Mathews .....	Grantsville.
Clay .....	T. O. Horan .....	Clay.
Doddridge .....	J. Ramsey .....	West Union.
Fayette .....	Geo. Lowe .....	Fayetteville.
Gilmer .....	C. M. Bennett .....	Glenville.
Grant .....	E. M. Johnson .....	Petersburg.
Greenbrier .....	J. S. McWhorter .....	Lewisburg.
Hampshire .....	J. D. Zimmerman .....	Romney.
Hancock .....	Geo. L. Bambrick .....	New Cumberland.
Hardy .....	M. W. Gamble .....	Moorefield.
Harrison .....	Will E. Morris .....	Clarksburg.
Jackson .....	R. E. Hughes .....	Ripley.
Jefferson .....	Geo. D. Moore .....	Charles Town.
Kanawha .....	S. B. Avis .....	Charleston.
Lewis .....	Charles P. Swint .....	Weston.
Lincoln .....	R. D. Stead .....	Hamlin.
Logan .....	E. H. Green .....	Logan.
Marion .....	Tusca Morris .....	Fairmont.
Marshall .....	Charles E. Carrigan .....	Moundsville.
Mason .....	B. H. Blagg .....	Pt. Pleasant.
Mercer .....	John R. Pendleton .....	Princeton.
Mineral .....	Arch J. Welton .....	Keyser.
Mingo .....	S. U. G. Rhodes .....	Williamson.
Monongalia .....	T. Sutton Boyd .....	Morgantown.
Monroe .....	R. L. Keadle .....	Union.
Morgan .....	H. D. Allen .....	Berkeley Springs.
McDowell .....	Robert R. Smith .....	Welch.
Nicholas .....	S. R. King .....	Summersville.
Ohio .....	J. B. Handlan .....	Wheeling.
Pendleton .....	William McCoy .....	Franklin.
Pleasants .....	G. D. Smith .....	St. Marys.
Pocahontas .....	F. R. Hill .....	Marlinton.
Preston .....	A. G. Hughes .....	Kingwood.
Purnam .....	C. C. Knapp .....	Winfield.
Raleigh .....	Hugh A. Dunn .....	Beckley.
Randolph .....	H. G. Kump .....	Elkins.
Ritchie .....	S. M. Hoff .....	Harrisville.
Roane .....	Edgar R. Staats .....	Spencer.
Summers .....	T. N. Read .....	Hinton.
Taylor .....	Gene W. Ford .....	Grafton.
Tucker .....	C. D. Smith .....	Parsons.
Tyler .....	K. C. Moore .....	Middlebourne.
Upshur .....	Roy Roger .....	Buckhannon.
Wayne .....	D. B. Hardwick .....	Wayne.
Webster .....	H. C. Thurmond .....	Webster Springs.
Wetzel .....	G. W. Coffield .....	New Martinsville.
Wirt .....	Jas. L. Smith .....	Eltzabeth.
Wood .....	Henry H. Teslow .....	Parkersburg.
Wyoming .....	Geo. P. Stewart .....	Pineville.

**CLERKS OF CIRCUIT COURTS.**

FOR THE TERM OF SIX YEARS, BEGINNING JANUARY 1, 1909.

COUNTIES.	NAMES.	ADDRESSES.
Berkeley	Charles W. Brandon	Phillippi.
Boone	L. DeW. Gerhardt	Martinsburg.
Braxton	F. T. Miller	Madison.
Brooke	C. H. Bland	Sutton.
Cabell	F. E. Foster	Wellsburg.
Calhoun	R. W. McWilliams	Huntington.
Clay	C. C. Starcher	Grantsville.
Doddridge	H. M. Young	Clay.
Fayette	U. G. Summers	West Union.
Gilmer	Floyd Keller	Fayetteville.
Grant	I. N. Hardman	Glenville.
Greenbrier	D. P. Hendricksson	Petersburg.
Hampshire	H. C. Skaggs	Lewisburg.
Hancock	V. M. Poling	Romney.
Hardy		
Harrison	T. M. Cochran	New Cumberland.
Jackson	I. Wade Colman	Clarksburg.
Jefferson	M. C. Archer	Ripley.
Kanawha	John M. Daniel	Charles Town.
Lewis	Ira H. Mottesheard	Charleston.
Lincoln	J. H. Conrod	Weston.
Logan	W. H. F. Curry	Hamlin.
Marion	Scott Justice	Logan.
Marshall	W. S. Black	Fairmont.
Mason	Victor E. Myers	Moundsville.
Mercer	Charles Burton	Pt. Pleasant.
Mineral	W. B. Honaker	Princeton.
Mingo	J. V. Bell	Keyser.
Monongalia	Guy White	Williamson.
Monroe	John Shriver	Morgantown.
Morgan	R. P. Boyd	Union.
McDowell	W. H. Webster	Berkeley Springs.
Nicholas	W. Burbridge Payne	Welch.
Ohio	J. J. Summers	Summersville.
Boadleton	John L. Kinghorn	Wheeling.
Pleasants	Isaac E. Batton	Franklin.
Pocahontas	W. R. Carson	St. Marys.
Preston	Geo. W. Sharp	Marlinton.
Putnam	John W. Watson	Kingwood.
Raleigh	H. E. Hodges	Winfield.
Randolph	Jackson Smith	Beckley.
Ritchie	G. N. Wilson	Elkins.
Roane	H. E. McGinnis	Harrisville.
Summers	L. O. Curtis	Spencer.
Taylor	W. H. Bonde	Hinton.
Tucker	M. D. Allender	Grafton.
Tyler	Lawrence Lipscomb	Parsons.
Washburn	J. G. Mayfield	Middlebourne.
Wayne	A. J. Zickfoose	Buckhannon.
Webster	G. W. Frazier	Wayne.
Wetzel	J. R. Dyer	Webster Springs.
Wirt	W. J. Postethwalte	New Martinsville.
Wood	Walter Hoffman	Elizabeth.
Wyoming	John G. Hogan	Parkersburg.
	E. M. Senter	Pinerville.

## CLERKS OF THE COUNTY COURTS.

FOR THE TERM OF SIX YEARS, BEGINNING JANUARY 1, 1909.

COUNTIES.	NAMES.	ADDRESSES.
Barbour . . . . .	S. F. Hoffman . . . . .	Philippi.
Berkeley . . . . .	E. A. Hobbs . . . . .	Martinsburg.
Boone . . . . .	William Osborne . . . . .	Madison.
Braxton . . . . .	E. W. Hefner . . . . .	Sutton.
Brooke . . . . .	K. C. Brushear . . . . .	Wellsburg.
Cabell . . . . .	F. F. McCullough . . . . .	Huntington.
Calhoun . . . . .	S. W. McClung . . . . .	Grantsville.
Clay . . . . .	James Reed . . . . .	Clay.
Doddridge . . . . .	U. G. Summers . . . . .	West Union.
Fayette . . . . .	S. T. Carter . . . . .	Fayetteville.
Gilmer . . . . .	N. E. Rymer . . . . .	Glenville.
Grant . . . . .	D. P. Hendrickson . . . . .	Petersburg.
Greenbrier . . . . .	John S. Crawford . . . . .	Lewisburg.
Hampshire . . . . .	C. W. Hajnes . . . . .	Romney.
Hancock . . . . .	Armour S. Cooper . . . . .	New Cumberland.
Hardy . . . . .	C. B. Wilton . . . . .	Moorefield.
Harrison . . . . .	W. Guy Tetrick . . . . .	Clarksburg.
Jackson . . . . .	C. C. Staats . . . . .	Ripley.
Jefferson . . . . .	Charles A. Johnson . . . . .	Charles Town.
Kanawha . . . . .	L. C. Massey . . . . .	Charleston.
Lewis . . . . .	H. W. Lightburn . . . . .	Weston.
Lincoln . . . . .	W. C. Holstein . . . . .	Hamlin.
Logan . . . . .	W. I. Campbell . . . . .	Logan.
Marion . . . . .	John F. Phillips . . . . .	Fairmont.
Marshall . . . . .	J. K. Clease . . . . .	Moundsville.
Mason . . . . .	Robert E. Mitchell . . . . .	Ft. Pleasant.
Mercer . . . . .	E. L. Bowman . . . . .	Princeton.
Mineral . . . . .	J. V. Bell . . . . .	Keyser.
Mingo . . . . .	Jas. Damron . . . . .	Williamson.
Monongalia . . . . .	John M. Gregg . . . . .	Morgantown.
Monroe . . . . .	E. S. McNeese . . . . .	Union.
Morgan . . . . .	M. S. Harrison . . . . .	Berkeley Springs.
McDowell . . . . .	Robert E. Bernheim . . . . .	Welch.
Nicholas . . . . .	P. N. Wiseman . . . . .	Summersville.
Ohio . . . . .	John H. Wells . . . . .	Wheeling.
Pendleton . . . . .	Isaac E. Brafton . . . . .	Franklin.
Pleasants . . . . .	A. L. Griffin . . . . .	St. Marys.
Pocahontas . . . . .	C. J. McCarty . . . . .	Marlinton.
Preston . . . . .	E. C. Everly . . . . .	Kingwood.
Putnam . . . . .	J. M. Henson . . . . .	Winfield.
Raleigh . . . . .	M. J. Meadows . . . . .	Beckley.
Randolph . . . . .	S. A. Rowan . . . . .	Elkins.
Ritchie . . . . .	W. R. Meservle . . . . .	Harrisville.
Roane . . . . .	Walter A. Carpenter . . . . .	Spencer.
Summers . . . . .	W. P. Bowling . . . . .	Hinton.
Taylor . . . . .	Hayward Fleming . . . . .	Grafton.
Tucker . . . . .	S. O. Billings . . . . .	Parsons.
Tyler . . . . .	J. W. Duty . . . . .	Middlebourne.
Upshur . . . . .	Ernest Phillip . . . . .	Buckhannon.
Wayne . . . . .	John G. Lambert . . . . .	Wayne.
Webster . . . . .	S. P. Allen . . . . .	Webster Springs.
Wetzel . . . . .	Sylvester Myers . . . . .	New Martinsville.
Wirt . . . . .	L. R. Thorn . . . . .	Elizabeth.
Wood . . . . .	Wm. Dudley . . . . .	Parkersburg.
Wyoming . . . . .	A. M. Stewart . . . . .	Pineville.

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