

POWERS AND DUTIES OF ELECTED COUNTY OFFICIALS



The background features a light blue gradient with several realistic water droplets of various sizes scattered across the right side and top. The droplets have highlights and shadows, giving them a three-dimensional appearance.

**Q: WHERE DO ELECTED
COUNTY OFFICIALS DERIVE
THEIR POWERS AND DUTIES?**

**A: W.VA. CONSTITUTION &
W.VA. CODE**

CONSTITUTIONAL PROVISIONS

- “THE VOTERS OF EACH COUNTY SHALL ELECT A SURVEYOR OF LANDS, A PROSECUTING ATTORNEY, A SHERIFF, AND ONE AND NOT MORE THAN TWO ASSESSORS, WHO SHALL HOLD THEIR RESPECTIVE OFFICES FOR THE TERM OF FOUR YEARS.” **W. VA. CONST. ART. IX, § 1**

CONSTITUTIONAL PROVISIONS (CONTINUED)

- “THERE SHALL ALSO BE ELECTED IN EACH DISTRICT OF THE COUNTY, BY THE VOTERS THEREOF, ONE CONSTABLE, AND IF THE POPULATION OF ANY DISTRICT SHALL EXCEED TWELVE HUNDRED, AN ADDITIONAL CONSTABLE, WHOSE TERM OF OFFICE SHALL BE FOUR YEARS, AND WHOSE POWERS AS SUCH SHALL EXTEND THROUGHOUT THEIR COUNTY. THE ASSESSOR SHALL, WITH THE ADVICE AND CONSENT OF THE COUNTY COURT, HAVE THE POWER TO APPOINT ONE OR MORE ASSISTANTS. CORONERS, OVERSEERS OF THE POOR AND SURVEYORS OF ROADS, SHALL BE APPOINTED BY THE COUNTY COURT. THE FOREGOING OFFICERS, EXCEPT THE PROSECUTING ATTORNEYS, SHALL RESIDE IN THE COUNTY AND DISTRICT FOR WHICH THEY SHALL BE RESPECTIVELY ELECTED.” **W. VA. CONST. ART. IX, § 2**

- CONSTABLES HAVE BEEN ABOLISHED AND DUTIES RESIDE WITH DEPUTY SHERIFFS

CONSTITUTIONAL PROVISIONS

(CONTINUED)

- “IT [THE LEGISLATURE] SHALL FURTHER PROVIDE FOR THE COMPENSATION, THE DUTIES AND RESPONSIBILITIES OF SUCH OFFICERS, AND MAY PROVIDE FOR THE APPOINTMENT OF THEIR DEPUTIES AND ASSISTANTS BY GENERAL LAWS.” **W. VA. CONST. ART. IX, § 6**

The background is a light blue gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance.

**Q: WHO SETS, ALTERS AND
CHECKS COUNTY OFFICIALS'
POWERS?**

A: THE LEGISLATURE

LEGISLATURE

- IS THE “BOSS” ACCORDING TO **W. VA. CONST. ART. IX, § 6**
 - “THE LEGISLATURE MAY, BY GENERAL LAW, CONTROL THE NUMBER OF DEPUTIES TO BE APPOINTED IN THE COUNTIES.” 46 OP. ATT’Y GEN. 340 (1956).
 - “THE CONSTITUTIONAL PROVISION RELATING TO COUNTY [COMMISSIONS] DOES NOT RID COUNTY [COMMISSIONS] OF LEGISLATIVE SUPERVISION.” *BOONE V. BOONE*, 17 S.E.2D 790, 123 W. VA. 696 (1941); *SEE ALSO STATE ROAD COMMISSIONER V. KANAWHA COUNTY COURT*, 163 S.E. 815, 112 W. VA. 98 (1932).

LEGISLATURE (CONTINUED)

- “WHILE THE CONSTITUTION PROVIDES FOR ELECTION OF COUNTY ASSESSORS, THE FUNCTIONS OR DUTIES OF SUCH ASSESSORS ARE LEFT SOLELY TO THE LEGISLATURE EXCEPT FOR THE CONSTITUTIONAL MANDATE THAT TAXES BE EQUAL AND UNIFORM.” *IN RE NATIONAL BANK OF W. VA. AT WHEELING*, 73 S.E.2D 655, W.VA. 673 (1952).

LEGISLATURE (CONTINUED)

- SETS STRUCTURE AND DUTIES OF COUNTY OFFICERS (UNLESS WV CONSTITUTION PROVIDES OTHERWISE)
- DIRECTS WHAT COUNTY OFFICIALS CAN (AND CAN'T) DO VIA STATUTE



ELECTED COUNTY OFFICIALS

SOURCES OF POWERS AND DUTIES

COUNTY COMMISSIONS

- FORMERLY “COUNTY COURT”
 - RENAMED IN ARTICLE 9, SECTION 9 BUT MAY STILL BE SOME REFERENCES TO “COUNTY COURT” IN CODE

COUNTY COMMISSIONS (CONTINUED)

- “THE OFFICE OF COUNTY COURT OR TRIBUNAL IN LIEU THEREOF HERETOFORE CREATED IS HEREBY CONTINUED IN ALL RESPECTS AS HERETOFORE CONSTITUTED, BUT FROM AND AFTER THE EFFECTIVE DATE OF THIS AMENDMENT SHALL BE DESIGNATED AS THE COUNTY COMMISSION AND WHEREVER IN THIS CONSTITUTION, THE CODE OF WEST VIRGINIA, ACTS OF THE LEGISLATURE OR ELSEWHERE IN LAW A REFERENCE IS MADE TO THE COUNTY COURT OF ANY COUNTY, SUCH REFERENCE SHALL BE READ, CONSTRUED AND UNDERSTOOD TO MEAN THE COUNTY COMMISSION. (CONT. ON NEXT PAGE)

COUNTY COMMISSIONS (CONTINUED)

EXCEPT AS OTHERWISE PROVIDED IN SECTION ELEVEN OR THIRTEEN OF THIS ARTICLE, THERE SHALL BE IN EACH COUNTY OF THE STATE A COUNTY COMMISSION, COMPOSED OF THREE COMMISSIONERS, AND TWO OF SAID COMMISSIONERS SHALL BE A QUORUM FOR THE TRANSACTION OF BUSINESS. IT SHALL HOLD FOUR REGULAR SESSIONS IN EACH YEAR, AND AT SUCH TIMES AS MAY BE FIXED AND ENTERED OF RECORD BY THE SAID COMMISSION. PROVISIONS MAY BE MADE BY LAW FOR HOLDING SPECIAL SESSIONS OF SAID COMMISSIONS.” **W. VA. CONST. ART. IX, § 9**

COUNTY COMMISSIONS (CONTINUED)

- COUNTY COMMISSION IS A “CORPORATION CREATED BY STATUTE”
- POSSESSES “ONLY SUCH POWERS EXPRESSLY CONFERRED BY THE STATE CONSTITUTION AND LEGISLATURE”

COUNTY COMMISSIONS (CONTINUED)

- “CAN DO ONLY SUCH THINGS AS ARE AUTHORIZED BY LAW, AND IN THE MODE PRESCRIBED”
 - *STATE EX REL. WEST VIRGINIA PARKWAYS AUTHORITY V. BARR*, 716 S.E.2D 689, 228 W. VA. 27 (2011).
- MUST HOLD 4 REGULAR SESSIONS (MEETINGS) PER YEAR.
 - **ARTICLE 9, SECTION 9**

COUNTY COMMISSIONS (CONTINUED)

- **COUNTY COMMISSION POWERS: ARTICLE 9, SECTION 11**
 - MAINTAIN CUSTODY OF DEEDS AND PAPERS OF RECORD
 - COUNTY CLERK'S RESPONSIBILITY
 - POLICE AND FISCAL MATTERS
 - RESPONSIBLE FOR GENERAL LEVIES

COUNTY COMMISSIONS (CONTINUED)

- **POLICE AND FISCAL MATTERS**
 - COMMISSION IS THE “FISC” \$\$
 - EX: SHERIFF MUST TRAIN DEPUTIES AND PROVIDE SAFETY EQUIPMENT, BUT COMMISSION HAS DISCRETION ON HOW MUCH \$ TO GIVE
 - “THE SHERIFF, THOUGH AN IMPORTANT LAW ENFORCEMENT OFFICER, DOES NOT HAVE THE COMPLETE OR THE EXCLUSIVE CONTROL OF THE INTERNAL POLICE AFFAIRS OF THE COUNTY.” *WEBSTER COUNTY COMMISSION V. CLAYTON*, 522 S.E.2D 201, 206 W.VA. 107 (1999).

COUNTY COMMISSIONS (CONTINUED)

SO WHO GETS SUED?

- WEST VIRGINIA CODE § 7-1-1 STATES IN PART:
“THE COUNTY COMMISSION . . . MAY SUE AND BE SUED,
PLEAD AND BE IMPEADED AND CONTRACT AND BE
CONTRACTED WITH.”

COUNTY COMMISSIONS (CONTINUED)

- **IS COUNTY COMMISSION ALWAYS A PARTY TO A SUIT?**
- UNDER W. VA. CODE § 7-1-1, A REVIEW OF STATE LAW DEMONSTRATES THAT THERE IS NO SIMILAR STATUTE PROVIDING THAT A COUNTY SHERIFF OR A COUNTY SHERIFF'S OFFICE MAY "SUE OR BE SUED." *SEE KOWALYK V. HANCOCK CTY.*, NO. CIV.A. 5:08CV181, 2009 WL 981848, AT *2 (N.D.W. VA. APR. 9, 2009)(STATING:"[S]TATE LAW DOES NOT APPEAR TO CONTAIN ANY SIMILAR PROVISION FOR COUNTY SHERIFF'S OFFICES.); *SEE ALSO BALL V. BAKER*, NO. 5:10-CV-00955, 2012 WL 4119127, AT *10 (S.D.W. VA. SEPT. 18, 2012)(ALSO FINDING THAT A COUNTY SHERIFF OR COUNTY SHERIFF'S DEPARTMENT HAS NO INDEPENDENT STATUS TO SUE OR BE SUED).

COUNTY COMMISSIONS (CONTINUED)

- ESSENTIALLY, THE PROPER PARTY TO SUE FOR ALLEGATIONS BEING ASSERTED AGAINST A COUNTY SHERIFF IN HIS OFFICIAL CAPACITY IS A SUIT AGAINST THE COUNTY COMMISSION.

COUNTY COMMISSIONS (CONTINUED)

- **WHO APPROVES HIRES?**
- W. VA. CODE § 7-7-7
- STAFFS AND BUDGETS OF COUNTY CLERK, CIRCUIT CLERK, SHERIFF, COUNTY ASSESSOR AND PROSECUTING ATTORNEY APPROVED/APPROPRIATED BY COUNTY COMMISSION



COUNTY COMMISSIONS (CONTINUED)

- **SO WHOSE EMPLOYEES ARE THEY?**
 - COMMISSION EMPLOYEES?
 - ELECTED OFFICIAL EMPLOYEES?
 - JOINT EMPLOYEES?

MCCARTY V.
HARLESS, 384
S.E.2D 164, 181
W. VA. 719 (1989)

- SHERIFF ISSUED A MEMO STATING NO OVERTIME PAY UNLESS PREVIOUSLY AUTHORIZED BY SHERIFF OR CHIEF DEPUTY. COUNTY COMMISSION ISSUED AN ORDER FOR EMPLOYEES TO FOLLOW A PROCEDURE TO SUBMIT OVERTIME PAY.
- SHERIFF'S DEPUTIES SUE FOR UNPAID WAGES DUE TO FACT NEITHER DEPUTIES, THE SHERIFF NOR THE COUNTY COMMISSION FOLLOWED THE PROCEDURES OUTLINED IN THE MEMO.

MCCARTY V.
HARLESS, 384
S.E.2D 164, 181
W. VA. 719 (1989)
(CONTINUED)

- SUPREME COURT HAD FOUR MAJOR HOLDINGS:
 - **SYL . PT. 1.** DEPUTY SHERIFFS ARE ENTITLED TO OVERTIME UNDER THE PROVISIONS OF W.VA. CODE § 21-5C-1 ET SEQ. IF THEY CAN PROVE THE SHERIFF OR COUNTY COMMISSION HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE OVERTIME WORKED, AND THUS SUFFERED OR PERMITTED THEM TO WORK, ALTHOUGH THE RIGHT TO RECOVER IS LIMITED BY THE TWO YEAR STATUTE OF LIMITATIONS FOUND IN W.VA. CODE § 21-5C-8(D).

MCCARTY V.
HARLESS, 384
S.E.2D 164, 181
W. VA. 719 (1989)
(CONTINUED)

- **SYL PT. 2.** DEPUTY SHERIFFS ARE ENTITLED TO INCLUDE MEAL PERIODS IN THE OVERTIME CALCULATION IF THE DEPUTY IS REQUIRED TO STAY ON SITE OR AT A PARTICULAR LOCATION FOR THE MEAL PERIOD.
- **SYL. PT. 3.** "COUNTY COMMISSIONS AND SHERIFFS ARE **JOINT EMPLOYERS** OF DEPUTY SHERIFFS AND MAY BE HELD LIABLE FOR VIOLATIONS OF THE WAGE AND HOUR LAW. W.VA. CODE 21-5C-8(A)." SYL. PT. 2, *AMOROSO V. MARION COUNTY COMM'N*, 172 W.VA. 342, 305 S.E.2D 299 (1983).

MCCARTY V.
HARLESS, 384
S.E.2D 164, 181
W. VA. 719 (1989)
(CONTINUED)

- **SYL. PT. 4.** SINCE THE SHERIFF AND COUNTY COMMISSION HAVE A CLEAR LEGAL DUTY TO PAY OVERTIME PROPERLY PERFORMED AND REPORTED, ANY MONIES OWED SHOULD BE PAID FIRST FROM THE SHERIFF'S BUDGET UNTIL EXHAUSTED. ONCE THE SHERIFF'S BUDGET IS DEPLETED, THE COUNTY COMMISSION IS RESPONSIBLE FOR AMOUNTS LEGALLY OWED.

AMOROSO V.
MARION COUNTY
COMM'N, 305
S.E.2D 299, 172 W.
VA. 342 (1983)

- ANOTHER OVERTIME COMPENSATION CASE INVOLVING DEPUTY SHERIFFS, COUNTY COMMISSION AND SHERIFF.
- QUESTION ON APPEAL WAS WHETHER DEPUTIES ARE EMPLOYEES OF THE SHERIFF, THE COUNTY COMMISSION OR BOTH?

AMOROSO V.
MARION COUNTY
COMM'N, 305
S.E.2D 299, 172 W.
VA. 342 (1983)

- COURT HELD:
 - **SYL. PT. 1.** DEPUTY SHERIFFS ARE EMPLOYEES ENTITLED TO OVERTIME COMPENSATION BENEFITS IN THE WAGE AND HOUR LAW. W. VA. CODE, 21-5C-1, ET SEQ.
 - **SYL. PT. 2.** COUNTY COMMISSIONS AND SHERIFFS ARE **JOINT EMPLOYERS** OF DEPUTY SHERIFFS AND MAY BE HELD LIABLE FOR VIOLATIONS OF THE WAGE AND HOUR LAW. W. VA. CODE, 21-5C-8(A).

FURY V. COUNTY
COURT OF WOOD
COUNTY, 608 F.
SUPP. 198 (1985)

- MEMORANDUM OPINION AND ORDER
- COUNTY EMPLOYEES SUED INDIVIDUAL ELECTED COUNTY OFFICIALS (SHERIFF, CLERK OF THE CIRCUIT COURT AND COUNTY CLERK) AS WELL AS THE COUNTY COMMISSION FOR VIOLATION OF THE FAIR LABOR STANDARDS ACT.
- ALLEGED DISPARATE PAY SCALE FOR MEN VERSUS WOMEN.
- QUESTION ON APPEAL WAS WHETHER THE EMPLOYEES WERE JOINT EMPLOYEES OF THE COMMISSION AND THE INDIVIDUAL ELECTED OFFICIALS.

FURY V. COUNTY
COURT OF WOOD
COUNTY, 608 F.
SUPP. 198 (1985)
(CONTINUED)

- COURT HELD THAT W. VA. CODE 7-7-7 IS CLEAR THAT THE COUNTY COMMISSION AND THE INDIVIDUAL ELECTED OFFICIALS ARE **JOINT EMPLOYERS**.
- BUT, THE GENDER-BASED WAGE DISCRIMINATION CLAIMS LIE AGAINST THE INDIVIDUAL ELECTED OFFICIALS.

FURY V. COUNTY
COURT OF WOOD
COUNTY, 608 F.
SUPP. 198 (1985)
(CONTINUED)

- AND THE COUNTY COMMISSION REMAINS A PARTY IN ORDER TO APPROPRIATE SUFFICIENT FUNDS SHOULD THE DAMAGES EXCEED THE INDIVIDUAL ELECTED OFFICIAL'S BUDGET.

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COUNTY COMMISSIONS (CONTINUED)

- FOLLOWING SLIDES ARE EXAMPLES OF STATUTORY DUTIES
- NOT MEANT TO BE AN EXHAUSTIVE LIST

COUNTY COMMISSIONS (CONTINUED)

- JUDGE OF THE ELECTION & QUALIFICATIONS OF COUNTY OFFICIALS; OTHER ELECTION DUTIES (I.E. CANVASS OF RETURNS)
 - **W. VA. CODE CHAPTER 3**
- BOARD OF EQUALIZATION (TAXES)
 - **W. VA. CODE § 11-3-24**
- PARKS AND RECREATION
 - **W. VA. CODE § 7-11-2**

COUNTY COMMISSIONS (CONTINUED)

- ANIMAL CONTROL (DOGS, CATS) AND POUND
 - **W. VA. CODE § 19-20-7 & § 19-20A-8**
- EMERGENCY SERVICES/AMBULANCE
 - **W. VA. CODE § 7-15-1 ET SEQ**
- FRANCHISES FOR COMMUNICATIONS AND OTHER SERVICES ALONG PUBLIC WAYS
 - **W. VA. CODE § 8-31-1 & § 17-16-6**

COUNTY COMMISSIONS (CONTINUED)

- AIRPORTS
 - **W. VA. CODE § 8-28-2**
- WATER AND SEWER
 - **W. VA. CODE § 7-1-3A**
- FARMLAND PROTECTION
 - **W. VA. CODE § 8A-12-1 ET SEQ**
- AND MANY, MANY MORE

COUNTY CLERKS

- “THE VOTERS OF EACH COUNTY SHALL ELECT A **CLERK OF THE COUNTY COMMISSION**, WHOSE TERM OF OFFICE SHALL BE SIX YEARS. HIS DUTIES AND COMPENSATION AND THE MANNER OF HIS REMOVAL SHALL BE PRESCRIBED BY LAW. BUT THE CLERKS OF SAID COMMISSIONS, NOW IN OFFICE, SHALL REMAIN THEREIN FOR THE TERM FOR WHICH THEY HAVE BEEN ELECTED, UNLESS SOONER REMOVED THEREFROM, IN THE MANNER PRESCRIBED BY LAW.” W. VA. CONST. ART. IX, § 12

COUNTY CLERKS (CONTINUED)

- **POWERS AND DUTIES (EXAMPLES)**
 - CHIEF ELECTION OFFICER OF THE COUNTY
 - VOTER REGISTRATION
 - **W. VA. CODE § 3-2-4**
 - MORE ELECTION DUTIES

COUNTY CLERKS (CONTINUED)

- KEEPER OF RECORDS
 - DEEDS, LIENS, BIRTHS, MARRIAGES, DEATHS, JUDGMENTS, VITAL STATISTICS, CERTAIN MAPS, COMMISSION ORDERS AND MINUTES
- RUNS PAYROLL, ACCOUNTS RECEIVABLE, PAYS BILLS AND KEEPS FINANCIAL STATEMENTS
- THE “CHECKBOOK”

CIRCUIT CLERKS

- ALSO KNOWN AS “CLERK OF THE CIRCUIT COURT” IN ARTICLE 8, SECTION 9
 - “THE VOTERS OF EACH COUNTY SHALL ELECT A **CLERK OF THE CIRCUIT COURT**, WHOSE TERM OF OFFICE SHALL BE SIX YEARS; HIS DUTIES, RESPONSIBILITIES, COMPENSATION AND THE MANNER OF REMOVING HIM FROM OFFICE SHALL BE PRESCRIBED BY LAW. WHENEVER THE CLERK SHALL BE SO SITUATED AS TO MAKE IT IMPROPER FOR HIM TO ACT IN ANY MATTER, A CLERK TO ACT THEREIN SHALL BE APPOINTED BY THE JUDGE OF THE CIRCUIT COURT OR THE CHIEF JUDGE THEREOF, IF THERE BE MORE THAN ONE JUDGE OF THE CIRCUIT COURT. VACANCIES SHALL BE FILLED IN THE MANNER PRESCRIBED BY LAW. A CLERK OF THE CIRCUIT COURT IN OFFICE ON THE EFFECTIVE DATE OF THIS ARTICLE SHALL CONTINUE IN OFFICE UNTIL HIS TERM SHALL EXPIRE, UNLESS SOONER REMOVED IN THE MANNER PRESCRIBED BY LAW.” **W. VA. CONST. ART. VIII, § 9**

CIRCUIT CLERKS (CONTINUED)

- “IT WAS THE INTENTION OF THE FRAMERS OF THIS ARTICLE, THAT THE CLERK OF A CIRCUIT COURT, ALTHOUGH AN INDEPENDENTLY ELECTED PUBLIC OFFICIAL, BE SUBJECT TO THE DIRECTION AND CONTROL OF THE CIRCUIT COURT OF THE COUNTY IN WHICH HE OR SHE SERVES OR OF THE CHIEF JUDGE OF THAT COUNTY’S CIRCUIT COURT WITH REGARD TO HIS OR HER COURT-RELATED DUTIES.” RUTLEDGE V. WORKMAN, 1985 W. VA. LEXIS 626, 175 W. VA. 375, 332 S.E.2D 831 (W. VA. 1985).
- WE WILL DISCUSS THIS DICHOTOMY LATER WHEN REVIEWING CASES.

CIRCUIT CLERKS (CONTINUED)

- **POWERS AND DUTIES (EXAMPLES)**
 - OFFICIAL RECORD KEEPER AND FEE OFFICER FOR CIRCUIT COURT, FAMILY COURT AND MENTAL HYGIENE OFFICE (SOME CLERKS HANDLE MAGISTRATE COURT, AS WELL)
 - CAN COLLECT FEES, FINES AND COSTS ASSOCIATED WITH CASES AND DISBURSE FUNDS

CIRCUIT CLERKS (CONTINUED)

- JURY ADMINISTRATOR
 - **W. VA. CODE § 52-1-1 ET SEQ**
- PROVIDES PROCEDURAL LEGAL ASSISTANCE FOR *PRO SE* LITIGANTS

SHERIFFS

- ARTICLE 9, SECTIONS 1 THROUGH 3
 - TERM LIMITED BY SECTION 3 (TWO CONSECUTIVE TERMS)
 - SECTION 2, OFFICE OF THE CONSTABLE, WAS ABOLISHED AND DUTIES TRANSFERRED TO DEPUTIES IN **W. VA. CODE § 50-1-17**

SHERIFFS (CONTINUED)

- **DEPUTY SHERIFFS**
- PART OF CIVIL SERVICE UNDER W. VA. CODE § 7-14-1 ET SEQ.
 - EXCEPT CHIEF DEPUTY

SHERIFFS (CONTINUED)

- **POWERS AND DUTIES (EXAMPLES)**
 - JAIL KEEPER
 - **W. VA. CODE § 7-8-2**
 - PROCESS SERVER
 - **W. VA. CODE § 56-3-1 ET SEQ;**
 - **W. VA. CODE § 50-1-14**

SHERIFFS (CONTINUED)

- ESTATE ADMINISTRATOR (IN CERTAIN INSTANCES)
 - **W. VA. CODE § 44-1-11**
- EX OFFICIO COUNTY TREASURER
 - **W. VA. CODE § 7-5-1**
- CONTAINMENT AND SALE/AUCTION OF UNCLAIMED LIVESTOCK
 - **W. VA. CODE § 19-18-2**

SHERIFFS

(CONTINUED)

- COMMISSION FOR TAX COLLECTIONS OVER 85% (PERSONAL AND REAL PROPERTY)
 - UP TO \$15K
 - **W. VA. CODE § 11A-1-17**
 - IT'S GOOD TO BE SHERIFF!! (SOMETIMES...)

ASSESSORS

- ARTICLE 9, SECTIONS 1 AND 2
 - FUNCTIONS OR DUTIES OF AN ASSESSOR ARE NOT PRESCRIBED BY THE CONSTITUTION. THESE ARE LEFT SOLELY TO THE WILL OF THE LEGISLATURE, SAVE AS TO THE CONSTITUTIONAL MANDATE (W. VA. CONST., ART. X, § 1) THAT TAXES BE EQUAL AND UNIFORM. THE ASSESSOR'S DUTIES, HOWEVER, ARE MINISTERIAL, NOT JUDICIAL. IN RE NATIONAL BANK, 137 W. VA. 673, 73 S.E.2D 655, 1952 W. VA. LEXIS 69 (1952), OVERRULED ON OTHER GROUNDS, IN RE KANAWHA VALLEY BANK, 144 W. VA. 346, 109 S.E.2D 649, 1959 W. VA. LEXIS 26 (1959). SEE BACKUS V. ABBOT, 136 W. VA. 891, 69 S.E.2D 48, 1952 W. VA. LEXIS 12 (W. VA. 1952).

ASSESSORS (CONTINUED)

- **POWERS AND DUTIES (EXAMPLES)**
 - ANNUAL PROPERTY ASSESSMENT (EVERYONE'S FAVORITE!)
 - **W. VA. CODE § 11-3-1 ET SEQ**

ASSESSORS (CONTINUED)

- DON'T FORGET THE HEAD TAX ON DOGS AND SHEEP
 - **W. VA. CODE § 7-7-6D AND § 19-20-2**
 - AND WHY AGAIN AREN'T CATS TAXED...(AN OLD FIELD ASSESSOR'S JOKE)
- MUST ATTEND COUNTY APPRAISAL-ASSESSMENT BOARD (IF CREATED BY COMMISSION)
 - **W. VA. CODE § 7-1-3L**

ASSESSORS (CONTINUED)

- **POWERS AND DUTIES**
 - DUTY TO NOTIFY OTHER OFFICERS OF PROPERTY CHANGE IN CERTAIN INSTANCES (I.E. CHANGE FROM NONRESIDENTIAL TO RESIDENTIAL PROPERTY)
 - VOLUNTARY REMEDIATION AND REDEVELOPMENT ACT, **W. VA. CODE § 22-22-16**

ASSESSORS (CONTINUED)

- CAN BE PAID ADDITIONAL COMPENSATION UP TO 10% OF SALARY FOR CERTAIN WORK PERFORMED ON BEHALF OF THE COMMISSIONER OF AGRICULTURE
 - INTERESTING INTERGOVERNMENTAL CROSSOVER
 - **W. VA. CODE § 7-7-6C**

PROSECUTING ATTORNEYS

- ARTICLE 9, SECTION 1
- **POWERS AND DUTIES (EXAMPLES)**
 - ATTEND TO CIVIL SUITS INVOLVING COUNTY AND COUNTY BOARD OF EDUCATION AS WELL AS CRIMINAL
 - **W. VA. CODE § 7-4-1(A)**

PROSECUTING ATTORNEYS

- “UPON THE REQUEST OF THE ATTORNEY GENERAL, THE **PROSECUTING ATTORNEY** SHALL MAKE A WRITTEN REPORT OF THE STATE AND CONDITION OF THE SEVERAL CAUSES IN WHICH THE STATE IS A PARTY, PENDING IN HIS OR HER COUNTY, AND UPON ANY MATTERS REFERRED TO THE **PROSECUTING ATTORNEY** BY THE ATTORNEY GENERAL AS PROVIDED BY LAW.”
 - **W. VA. CODE § 7-4-1(C)**

PROSECUTING ATTORNEYS (CONTINUED)

- “SHALL RENDER TO THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES, WITHOUT ADDITIONAL COMPENSATION, THE LEGAL SERVICES THE DEPARTMENT MAY REQUIRE” IN CERTAIN MATTERS INVOLVING CHILD ABUSE AND NEGLECT. CODE § 49-4-501
- “IN EVERY CASE IN WHICH THE STATE TAX COMMISSIONER MAY APPEAR THE PROSECUTING ATTORNEY OF THE COUNTY IN WHICH THE CASE IS PENDING SHALL GIVE HIS ASSISTANCE, WITHOUT ADDITIONAL COMPENSATION.”
 - **W. VA. CODE § 11-1-7**

PROSECUTING ATTORNEYS (CONTINUED)

- EVEN MUST GET INVOLVED WITH INSECTS, PESTS, PLANT DISEASES AND NOXIOUS WEEDS!
 - “IT SHALL BE THE DUTY OF THE **PROSECUTING ATTORNEY** OF THE COUNTY IN WHICH THE VIOLATION OCCURRED TO REPRESENT THE DEPARTMENT OF AGRICULTURE, TO INSTITUTE PROCEEDINGS AND TO PROSECUTE THE PERSON CHARGED WITH SUCH VIOLATION.”
 - **W. VA. CODE § 19-12-16**

The background is a light blue gradient with several realistic water droplets of various sizes scattered across the surface. The droplets have highlights and shadows, giving them a three-dimensional appearance.

CASES AND HYPOTHETICALS

STATE EX REL.
LAMBERT V.
CORTELLESSI, 386
S.E.2D 640, 182 W.
VA. 142 (1989)

- APPEAL INVOLVED SEVERAL COUNTY OFFICIALS (CIRCUIT CLERK, COUNTY CLERK AND PROSECUTING ATTORNEY) FROM SEVERAL COUNTIES. COUNTY COMMISSIONS REDUCED THE COUNTY OFFICIALS' BUDGETS WITHOUT CONSULTING AS TO THE WORKLOADS AND NEEDS OF THE RESPECTIVE OFFICES.
- SUPREME COURT HELD THAT THE COMMISSION WAS IN THE WRONG. W. VA. CODE 7-7-7 REQUIRES A CO. COMMISSION TO CONSULT WITH OFFICIALS REGARDING THEIR WORKLOAD, OPERATING NEEDS AND DUTIES FOR THE COMING YEAR WHEN SETTING THE BUDGET.

STATE EX REL.
LAMBERT V.
CORTELLESSI, 386
S.E.2D 640, 182 W.
VA. 142 (1989)
(CONTINUED)

- **SYL. PT. 1:** COURTS CAN INTERVENE ““WHERE THE COUNTY COMMISSION HAS ARBITRARILY FIXED THE OVERALL BUDGET OF A COUNTY OFFICER WITHOUT HAVING CONSULTED WITH THE COUNTY OFFICER AS THE AMOUNT OF FUNDS WHICH IS “REASONABLE AND PROPER” FOR THE PERFORMANCE OF THE STATUTORY DUTIES OF HIS OR HER OFFICE.””
- **SYL. PT. 3:** COUNTY COMMISSION IS EXPRESSLY GRANTED THE CONSTITUTIONAL AND STATUTORY AUTHORITY TO FIX THE BUDGET FOR A CIRCUIT CLERK.

STATE EX REL.
LAMBERT V.
CORTELLESSI, 386
S.E.2D 640, 182 W.
VA. 142 (1989)
(CONTINUED)

- SUPREME COURT ALSO OPINED THAT CIRCUIT CLERKS ARE HALF JUDICIAL AND HALF EXECUTIVE POSITIONS, SPLITTING THE OVERSIGHT AND BUDGET BETWEEN THE CIRCUIT COURT AND THE COUNTY COMMISSION IS NOT A SEPARATION OF POWERS ISSUE BECAUSE THOSE DUTIES ARE GRANTED BY THE W.V. CONSTITUTION. CIRCUIT CLERK, THOUGH HALF JUDICIAL, HALF COUNTY, RECEIVES ITS BUDGET EXPRESSLY THROUGH COUNTY COMMISSION DUE TO SPECIFIC CONSTITUTIONAL LANGUAGE.

COUNTY COMM'M
OF GREENBRIER
COUNTY V.
CUMMINGS, 720
S.E.2D 587, 228 W.
VA. 464 (2011)

- SHERIFF ALLEGED THAT THE COUNTY COMMISSION ARBITRARILY AND CAPRICIOUSLY LOWERED HIS BUDGET.
- THE TRIAL COURT AGREED AND ORDERED THE COMMISSION TO REVISE THE BUDGET. THE COUNTY COMMISSION APPEALED.
- THE SUPREME COURT REVERSED THE TRIAL COURT AND FOUND THAT THE COUNTY COMMISSION HAD DONE SUFFICIENT INVESTIGATION AND CONSULTATION WITH THE SHERIFF REGARDING THE BUDGETARY NEEDS OF THE OFFICE WHEN IT REDUCED THE BUDGET.

COUNTY COMM’M
OF GREENBRIER
COUNTY V.
CUMMINGS, 720
S.E.2D 587, 228 W.
VA. 464 (2011)
(CONTINUED)

- THE COURT UPHELD LAMBERT ABOVE IN **SYL. PT. 4**. COUNTY COMMISSION MUST “GIVE DUE CONSIDERATION TO DUTIES, RESPONSIBILITIES AND WORK” OF OTHER ELECTED OFFICIALS AND CANNOT ARBITRARILY FIX THEIR BUDGETS WITHOUT CONSULTING THE OFFICIAL AS TO THE “REASONABLE AND PROPER” AMOUNT OF FUNDS TO PERFORM THEIR STATUTORY DUTIES.

COUNTY COMM'M
OF GREENBRIER
COUNTY V.
CUMMINGS, 720
S.E.2D 587, 228 W.
VA. 464 (2011)
(CONTINUED)

- THE COURT ADDED **SYL. PT. 5**. ABSENT EVIDENCE THAT A COUNTY COMMISSION HAS BUDGETED A CLEARLY INADEQUATE SUM FOR THE PERFORMANCE OF THE STATUTORY DUTIES OF A COUNTY OFFICER, A TRIAL COURT LACKS THE AUTHORITY TO DIRECT A COUNTY COMMISSION TO MEET FOR THE PURPOSE OF PREPARING A REVISED BUDGET.

HARRISON
COUNTY COMM'N
V. HARRISON
COUNTY
ASSESSOR, 659
S.E.2D 555, 222 W.
VA. 25 (2008)

- THE ASSESSOR MOVED AN EMPLOYEE FROM THE GENERAL FUND TO BEING PAID FROM A “VALUATION FUND” AND DID NOT SEEK COUNTY COMMISSION APPROVAL.
- SUPREME COURT RULED THAT THE COUNTY COMMISSION DID NOT HAVE OVERSIGHT OF THAT PARTICULAR FUND BY STATUTE.

HARRISON COUNTY
COMM'N V.
HARRISON COUNTY
ASSESSOR, 659
S.E.2D 555, 222 W.
VA. 25 (2008)
(CONTINUED)

- **SYL. POINT 8:** WHEN A COUNTY ASSESSOR SEEKS TO HIRE AN EMPLOYEE TO PERFORM DUTIES OTHER THAN ASSESSING AND APPRAISING DUTIES, THE ASSESSOR IS REQUIRED TO FIRST OBTAIN THE ADVICE AND CONSENT OF THE COUNTY COMMISSION PURSUANT TO W. VA. CODE § 7-7-7. HOWEVER, WHEN A COUNTY ASSESSOR SEEKS TO HIRE AN EMPLOYEE TO PERFORM ASSESSING AND APPRAISING DUTIES, WHICH EMPLOYEE WILL BE PAID FROM THE REVOLVING VALUATION FUND ESTABLISHED IN W. VA. CODE § 11-1C-8, THE ASSESSOR IS NOT REQUIRED TO OBTAIN THE ADVICE AND CONSENT OF THE COUNTY COMMISSION. INSTEAD, THE ASSESSOR MUST OBTAIN APPROVAL FROM THE PROPERTY VALUATION TRAINING AND PROCEDURES COMMISSION, AS REQUIRED BY W. VA. CODE § 11-1C-8(A).

STATE EX REL
CABELL COUNTY
DEPUTY SHERIFF'S
ASS'N V. DUNFEE,
258 S.E.2D 117, 163
W. VA. 539 (1979)

- SHERIFF INCREASED DEPUTY PAY BASED ON A “VERBAL PROMISE” FROM 2 COUNTY COMMISSIONERS THAT THEY WOULD BACKFILL ANY BUDGET DEFICIT THE SHERIFF ENCOUNTERED.
- SHERIFF’S BUDGET WAS EXHAUSTED, COUNTY COMMISSION DID NOT FULFILL ITS “PROMISE” AND THE SHERIFF CUT DEPUTY SALARIES.
- CIVIL SERVICE COMMISSION ORDERED BACK PAY BUT CIRCUIT COURT DENIED THE RELIEF.

STATE EX REL
CABELL COUNTY
DEPUTY SHERIFF'S
ASS'N V. DUNFEE,
258 S.E.2D 117, 163
W. VA. 539 (1979)

- SUPREME COURT UPHELD CIRCUIT COURT AND OPINED THAT W. VA. CODE 7-7-7 PROHIBITS SHERIFF FROM RAISING DEPUTIES' SALARIES IF THE INCREASE CAUSES HIS EXPENSES TO EXCEED THE COUNTY COMMISSION APPROVED BUDGET FOR THE OFFICE.
- TO RULE OTHERWISE "WOULD BE TO ORDER THE SHERIFF TO EXCEED HIS STATUTORY AUTHORITY AND REQUIRE HIM TO PERFORM AN ILLEGAL ACT."

STATE EX REL.
CORE V.
MERRIFIELD, 502
S.E.2D 197, 202 W.
VA. 100 (1998)

- PER CURIAM OPINION
- THE WEST VIRGINIA ASSOCIATION OF COUNTY OFFICIALS (NOW WVCA) FILED AMICUS BRIEF IN THIS MATTER
- THE “DEPUTY CIRCUIT CLERK IN THE MIDDLE”
- BATTLE BETWEEN CIRCUIT JUDGE AND CIRCUIT CLERK OVER EMPLOYEE OVERSIGHT

STATE EX REL.
CORE V.
MERRIFIELD, 502
S.E.2D 197, 202 W.
VA. 100 (1998)
(CONTINUED)

- DURING A HEARING WITH CIRCUIT CLERK, JUDGE INVOKES ***RUTLEDGE CONTROL*** OVER THE COURTROOM AND ORDERED CIRCUIT CLERK, AS IT RELATED TO A DEPUTY CLERK WORKING FOR THE JUDGE, THE FOLLOWING:
- JUDGE MUST VIEW ALL ITEMS IN EMPLOYEES PERSONNEL FILE BEFORE THEY ARE PLACED THERE;

STATE EX REL.
CORE V.
MERRIFIELD, 502
S.E.2D 197, 202 W.
VA. 100 (1998)
(CONTINUED)

- CIRCUIT CLERK NOT TO HARASS DEPUTY CLERK REGARDING WORKING FOR THE JUDGE;
- NO PUNITIVE ACTION AGAINST EMPLOYEE WITHOUT JUDGE'S WRITTEN CONSENT; AND
- NO MEETINGS WITH THE EMPLOYEE UNLESS JUDGE IS PRESENT.

STATE EX REL.
CORE V.
MERRIFIELD, 502
S.E.2D 197, 202 W.
VA. 100 (1998)
(CONTINUED)

- ***RUTLEDGE CONTROL EXPLAINED:***
- BATTLE BETWEEN CIRCUIT COURT AND CIRCUIT CLERK
- JUDGE FRUSTRATED BY MERRY GO ROUND OF INSUFFICIENT CLERKS ASSIGNED TO HER
- “TO THE DETRIMENT OF THE EFFICIENCY OF HER COURT”
- JUDGE ENTERS ORDER PROHIBITING TRANSFER OF CLERK WITHOUT HER APPROVAL

STATE EX REL.
CORE V.
MERRIFIELD, 502
S.E.2D 197, 202 W.
VA. 100 (1998)
(CONTINUED)

- ***RUTLEDGE CONTROL (CONT.)***
- SUPREME COURT HELD:
- **SYL. PT. 1.** IT WAS THE INTENTION OF THE FRAMERS OF THE JUDICIAL ARTICLE OF THE W. VA. CONST. THAT THE CLERK OF A CIRCUIT COURT, ALTHOUGH AN INDEPENDENTLY ELECTED, PUBLIC OFFICIAL, BE SUBJECT TO THE DIRECTION AND CONTROL OF THE CIRCUIT COURT OF THE COUNTY IN WHICH SHE SERVES OR OF THE CHIEF JUDGE OF THAT COUNTY'S CIRCUIT COURT WITH REGARD TO HER COURT-RELATED DUTIES.

STATE EX REL.
CORE V.
MERRIFIELD, 502
S.E.2D 197, 202 W.
VA. 100 (1998)
(CONTINUED)

- ***RUTLEDGE CONTROL (CONT.)***
- **SYL. PT. 2.** THE JUDICIAL ARTICLE (ARTICLE VIII) OF THE W. VA. CONST. CREATES THE OFFICE OF CLERK OF THE CIRCUIT COURT AND THE CIRCUIT CLERK IS AN OFFICER WITHIN THE JUDICIAL SYSTEM; THEREFORE, THE HIERARCHY OF ADMINISTRATIVE CONTROL ESTABLISHED BY [W. VA. CONST. ART. VIII, § 3](#) THAT REPOSES OVERALL ADMINISTRATIVE AUTHORITY FOR THE ENTIRE JUDICIAL SYSTEM IN THE SUPREME COURT OF APPEALS BY AND THROUGH ITS CHIEF JUSTICE AND ADMINISTRATIVE DIRECTOR, AND THEREAFTER REPOSES LOCAL ADMINISTRATIVE AUTHORITY IN THE CIRCUIT COURT THROUGH THE JUDGE OR CHIEF JUDGE OF EACH CIRCUIT ALSO CONTROLS THE OFFICE OF CIRCUIT CLERK WITH REGARD TO THE CLERK'S JUDICIAL FUNCTIONS.

STATE EX REL.
CORE V.
MERRIFIELD, 502
S.E.2D 197, 202 W.
VA. 100 (1998)
(CONTINUED)

- ***RUTLEDGE CONTROL (CONT.)***
- **SYL. PT. 3.** A CIRCUIT JUDGE HAS COMPLETE CONTROL OF THE DEPUTY CIRCUIT CLERK ASSIGNED TO HER COURT AND A CIRCUIT CLERK MAY BE REMOVED FROM OFFICE UNDER [W. VA. CODE 6-6-7](#) FOR FAILING TO COMPLY IN THE UTMOST GOOD FAITH WITH THE DIRECTIONS OF THE CIRCUIT COURT.

STATE EX REL.
CORE V.
MERRIFIELD, 502
S.E.2D 197, 202 W.
VA. 100 (1998)
(CONTINUED)

- **NOW, BACK TO *CORE***
- THE SUPREME COURT HELD THE FOLLOWING:
 - CIRCUIT JUDGE MAY SELECT COURTROOM CLERK TO MAINTAIN EFFICIENT OPERATIONS, THE CLERK IS UNDER THE DIRECT CONTROL AND SUPERVISION OF THE JUDGE, THOUGH THE CLERK SHALL REMAIN A COUNTY EMPLOYEE;

STATE EX REL.
CORE V.
MERRIFIELD, 502
S.E.2D 197, 202 W.
VA. 100 (1998)
(CONTINUED)

- JUDGE'S PRIOR CONSENT TO HIRE, FIRE, PROMOTE, DEMOTE, DISCIPLINE, ASSIGN ADDITIONAL DUTIES OR REDUCE PAY IS REQUIRED (APPLIED *RUTLEDGE*);
- HOWEVER, WHEN NOT WORKING FOR A JUDGE, THE DEPUTY CLERK WORKS FOR AND IS RESPONSIBLE TO THE CIRCUIT CLERK AND CAN BE DISCIPLINED BY CIRCUIT CLERK (STILL REQUIRED JUDGE'S CONSENT IF DISCIPLINE IMPACTS CLERK'S COURTROOM DUTIES);

STATE EX REL.
CORE V.
MERRIFIELD, 502
S.E.2D 197, 202 W.
VA. 100 (1998)
(CONTINUED)

- CIRCUIT JUDGE HAS COMPLETE ACCESS TO CLERK'S PERSONNEL FILE;
- CIRCUIT CLERK MAY INQUIRE INTO PRIVATE CONVERSATIONS BETWEEN THE JUDGE AND DEPUTY CLERK; AND
- PROVISION REGARDING HOSTILE WORK ENVIRONMENT WAS BEYOND JUDGE'S SCOPE OF POWER.

STATE EX REL.
CORE V.
MERRIFIELD, 502
S.E.2D 197, 202 W.
VA. 100 (1998)
(CONTINUED)

- THE OPINION ALSO DISCUSSES WHAT A JUDGE CAN AND CANNOT ORDER A SHERIFF TO DO DURING A TRIAL:
 - CANNOT ORDER SHERIFF TO DRIVE JURORS TO/FROM THEIR HOMES (EXCEPT EMERGENCY);
 - CANNOT ORDER SHERIFF TO ARRANGE TRANSPORTATION (LIMO, TAXI, ETC.) TO HOTEL FOR JURORS;

STATE EX REL.
CORE V.
MERRIFIELD, 502
S.E.2D 197, 202 W.
VA. 100 (1998)
(CONTINUED)

- CANNOT ORDER SHERIFF TO TRANSPORT JURORS TO MEDICAL DOCTORS;
- CAN ORDER SHERIFF TO PROVIDE PROPER ACCOMMODATIONS AND SECURITY FOR JURORS; AND
- CAN ORDER SHERIFF TO PROVIDE NUMBER OF DEPUTIES TO COURT AND REQUIRE THEM TO ARRIVE AT ESTABLISHED TIME.

STATE EX REL.
FRAZIER V.
MEADOWS, 454
S.E.2D 65, 193 W.
VA. 20 (1994)

- CIRCUIT JUDGE INFORMS SHERIFF AND COUNTY COMMISSION HE NEEDS TO HIRE A REPLACEMENT BAILIFF FOR ONE ABOUT TO RETIRE.
- JUDGE AGREED TO INTERVIEW EXISTING DEPUTY SHERIFFS BUT ALSO WANTED TO INTERVIEW CIVILIANS.
- THE POSITION WOULD BE MOVED FROM SHERIFF'S DEPT. TO THE OFFICE OF THE CIRCUIT COURT. WAGE AND HOUR REVIEW BOARD DENIES HIRING OF CIVILIAN BAILIFF AND BAILIFF IS RELIEVED OF DUTIES BY SHERIFF.

STATE EX REL.
FRAZIER V.
MEADOWS, 454
S.E.2D 65, 193 W.
VA. 20 (1994)
(CONTINUED)

- JUDGE WAS IN MIDST OF TRIAL AND OFFERED TO PAY BAILIFF OUT OF JUDGE'S POCKET.
- SHERIFF ASSIGNS ONE OF HIS DEPUTIES AS BAILIFF ACCORDING TO STATUTE AND TRIAL COURT RULES, RETAINED THE DEPUTY UNDER HIS CONTROL AND SUPERVISION, AND RETAINED AUTHORITY TO ASSIGN BAILIFF TO OTHER DUTIES.

STATE EX REL.
FRAZIER V.
MEADOWS, 454
S.E.2D 65, 193 W.
VA. 20 (1994)
(CONTINUED)

- SUPREME COURT HELD THAT A CIRCUIT JUDGE “DIRECTS AND CONTROLS BAILIFFS ASSIGNED TO HIM AND THAT WHERE A SUBSTANTIAL, GENUINE, AND IRRECONCILABLE CONFLICT EXISTS BETWEEN THE SHERIFF AND CIRCUIT COURT JUDGE CONCERNING THE SELECTION OF A BAILIFF THAT IMPAIRS, OR IS LIKELY TO IMPAIR, THE COURT’S ABILITY TO FUNCTION PROPERLY, THE ULTIMATE AUTHORITY TO MAKE A REASONABLE SELECTION OF A QUALIFIED BAILIFF IS CONSTITUTIONALLY VESTED IN THE COURT.”

STATE EX REL.
LAMBERT V.
STEPHENS, 490
S.E.2D 891, 200 W.
VA. 802 (1997)

- CIRCUIT JUDGE ISSUES ORDER DESIGNATING A PARKING AREA FOR MAGISTRATE USE ONLY.
- DISPUTE BEGINS WITH CIRCUIT JUDGE, SHERIFF AND COUNTY COMMISSION OVER THE USE OF THE PARKING AREA.

STATE EX REL.
LAMBERT V.
STEPHENS, 490
S.E.2D 891, 200 W.
VA. 802 (1997)

- JUDGE FOUND COMMISSION AND SHERIFF IN CONTEMPT AND SENTENCED THEM TO 30 DAYS IN JAIL UNLESS THEY FIXED THE PARKING LOT SITUATION.

STATE EX REL.
LAMBERT V.
STEPHENS, 490
S.E.2D 891, 200 W.
VA. 802 (1997)

- SUPREME COURT HELD THAT CIRCUIT COURTS HAVE INHERENT AUTHORITY TO REQUIRE REASONABLE AND NECESSARY RESOURCES FOR THE PERFORMANCE OF ITS RESPONSIBILITIES.

STATE EX REL.
LAMBERT V.
STEPHENS, 490
S.E.2D 891, 200 W.
VA. 802 (1997)
(CONTINUED)

- **SYL. PT. 3.** COURTS HAVE INHERENT AUTHORITY TO REQUIRE NECESSARY RESOURCES, SUCH AS SUFFICIENT FUNDS FOR OPERATING EXPENSES, WORK SPACE, PARKING SPACE, SUPPLIES, AND OTHER MATERIAL ITEMS. IN ORDER FOR A COURT TO INVOKE USE OF ITS INHERENT POWER TO REQUIRE RESOURCES, THE COURT MUST DEMONSTRATE THAT SUCH RESOURCES ARE REASONABLY NECESSARY FOR THE PERFORMANCE OF ITS RESPONSIBILITIES IN THE ADMINISTRATION OF JUSTICE. ALTHOUGH COURTS MUST BE CAUTIOUS NOT TO REACH BEYOND THE POWER OF THE JUDICIAL BRANCH, IT IS CRUCIAL FOR THE JUDICIARY TO BE ABLE TO INVOKE SUCH POWER AS IS REASONABLY NECESSARY TO MAINTAIN ITSELF AS AN INDEPENDENT AND *EQUAL* BRANCH OF OUR GOVERNMENT.

STATE EX REL.
LAMBERT V.
STEPHENS, 490
S.E.2D 891, 200
W. VA. 802
(1997) (CONTINUED)

- COULD THIS OPINION BE EXPANDED TO OTHER CONSTITUTIONAL COUNTY OFFICERS?
 - EX: PROSECUTOR'S EXISTING SPACE BEING CUT TO ACCOMMODATE PROBATION OFFICERS.

STATE EX REL.
LAMBERT V.
STEPHENS, 490
S.E.2D 891, 200
W. VA. 802
(1997) (CONTINUED)

- DOES THIS MEAN THAT A CIRCUIT JUDGE COULD CLOSE A COURT IN A COUNTY WHILE THE COUNTY COMMISSION KEEPS OTHER OFFICES OPEN?
- WHAT IF COUNTY COMMISSION ORDERS ALL BUILDINGS CLOSED AND COURT WISHES TO REMAIN OPEN?
- WHOSE COVID PROVISIONS, OR LACK THEREOF, WOULD CONTROL?

ETHICS OPINIONS

(SPECIFICALLY,
W. VA. CODE §61-10-15
CRIMINAL PROVISIONS)

- **2005-13 COUNTY PROSECUTING ATTORNEY**
 - PART-TIME PROSECUTING ATTORNEY MAY NOT BE EMPLOYED TO PERFORM ADDITIONAL LEGAL WORK FOR COUNTY UNDER GRANT ADMINISTERED BY COUNTY COMMISSION

- **2007-03 COUNTY ASSESSOR**
 - MARRIAGE TO EMPLOYEE WHO WORKS IN ASSESSOR'S OFFICE WILL RESULT IN PROHIBITED INTEREST IN SPOUSE'S EMPLOYMENT CONTRACT

ETHICS OPINIONS (CONTINUED)

- **2008-10 COUNTY COMMISSIONER**
 - CONTRACT BETWEEN COMMISSIONER'S BUSINESS AND COUNTY AIRPORT AUTHORITY WHICH WAS APPROVED PRIOR TO COMMISSIONER'S ELECTION MAY REMAIN IN EFFECT
 - COMMISSIONER MAY NOT SERVE ON AIRPORT AUTHORITY
 - COMMISSIONER MAY NOT VOTE ON APPOINTMENTS TO AIRPORT AUTHORITY
 - COMMISSIONER MUST FOLLOW LIMITATIONS ON VOTING IN REGARD TO AIRPORT AUTHORITY MATTERS

ETHICS OPINIONS (CONTINUED)

- **2009-05 PROSECUTING ATTORNEY**
 - MAY NOT CONTRACT WITH LOCAL EXTENSION SERVICE AGENCY BECAUSE HE EXERCISES VOICE, INFLUENCE OR CONTROL OVER EXTENSION AGENCY CONTRACTS.

- **2011-20 AN ELECTED COUNTY COMMISSIONER**
 - MAY PURCHASE TAX LIENS AT A SHERIFF'S SALE OR THROUGH THE STATE AUDITOR'S OFFICE, OR BOTH, WHEN COUNTY COMMISSION HAD NO DIRECT INVOLVEMENT IN THE ASSESSMENT OF THE PROPERTY.
 - MAY NOT PURCHASE A TAX LIEN ON PROPERTY FOR WHICH THE OWNER REQUESTED ADJUSTMENT OF ASSESSED VALUE OR OTHER RELIEF FROM COUNTY COMMISSION SITTING AS THE BOARD OF EQUALIZATION AND REVIEW.

ETHICS OPINIONS (CONTINUED)

- **2012-02 COUNTY COMMISSIONER**
 - ETHICS ACT DOES NOT PROHIBIT COUNTY FROM PURCHASING PROPERTY FROM REAL ESTATE BUSINESS WITH WHICH A **COUNTY COMMISSIONER** IS ASSOCIATED, WITH LIMITATIONS: COMMISSIONER MAY NOT USE HIS POSITION TO INFLUENCE PURCHASE OF THE PROPERTY; SPECIFICALLY, HE MAY NOT COMMUNICATE WITH FELLOW COUNTY COMMISSIONERS, OR MEMBERS OR STAFF OF THE BUILDING COMMISSION, ON MATTERS RELATING TO THE PROPERTY.
 - NO PROHIBITED FINANCIAL INTEREST WHERE NEITHER COMMISSIONER NOR HIS IMMEDIATE FAMILY MEMBERS HAVE OWNERSHIP INTEREST IN PROPERTY COUNTY COMMISSION SEEKS TO PURCHASE FROM REAL ESTATE BUSINESS WITH WHICH HE IS ASSOCIATED.

ETHICS OPINIONS (CONTINUED)

- NO PROHIBITED FINANCIAL INTEREST WHERE COMMISSIONER IS NOT: A DIRECTOR OR OFFICER; THE LISTING AGENT FOR THE PROPERTY; OR, ENTITLED TO RECEIVE ANY COMMISSION FROM THE SALE OF THE PROPERTY.
- COUNTY COMMISSIONER ASSOCIATED WITH REAL ESTATE BUSINESS SELLING PROPERTY TO COUNTY MEETS STATUTORY EXEMPTION SO LONG AS HE RECUSES HIMSELF. (*SEE* VOTING)
- COUNTY COMMISSIONER ASSOCIATED WITH REAL ESTATE BUSINESS SELLING PROPERTY TO COUNTY MUST RECUSE HIMSELF FROM ALL MATTERS RELATED THERETO.

ETHICS OPINIONS (CONTINUED)

- **2012-11 COUNTY COMMISSIONER**
 - ETHICS ACT PERMITS LIVING WITH COUNTY EMPLOYEE SO LONG AS NEPOTISM RULES FOLLOWED.
 - W. VA. CODE § 61-10-15 PROHIBITS LIVING WITH COUNTY EMPLOYEE EVEN IF NEPOTISM RULES FOLLOWED AND/OR EVEN IF EMPLOYEE TRANSFERRED TO ANOTHER COUNTY OFFICE.

ETHICS OPINIONS (CONTINUED)

- **2013-08 COUNTY PROSECUTOR**
 - ETHICS ACT DOES NOT PROHIBIT SPOUSE'S EMPLOYMENT AS SCHOOL NURSE IN SAME COUNTY.
 - COUNTY PROSECUTOR HAS VOICE, INFLUENCE, AND CONTROL OVER BOARD OF EDUCATION CONTRACTS.
 - SPOUSE OF A COUNTY PROSECUTOR MAY WORK AS SCHOOL NURSE IN SAME COUNTY SINCE POSITION IS CONSIDERED A TEACHER FOR PURPOSES OF § 61-10-15.

ETHICS OPINIONS (CONTINUED)

- **2016-08 COUNTY COMMISSION**
 - W. VA. CODE § 61-10-15 PROHIBITS A COUNTY COMMISSION FROM LEASING OFFICE SPACE IN A COUNTY BUILDING TO AN APPOINTED ASSISTANT PROSECUTING ATTORNEY.

ETHICS OPINIONS (CONTINUED)

- **2017-11 A COUNTY COMMISSIONER**
 - A COUNTY COMMISSIONER MAY NOT KNOWINGLY SELL HIS PRODUCTS TO CONTRACTORS OR SUBCONTRACTORS TO USE FOR COUNTY PROJECTS. THE REQUESTER'S STAFF IS NOT REQUIRED TO ASK ALL CUSTOMERS WHAT THE FINAL DISPOSITION OF THE MATERIALS PURCHASED WILL BE BUT, INSTEAD, THE REQUESTER MUST TAKE REASONABLE PRECAUTIONS TO ENSURE THAT HIS PRODUCTS ARE NOT SOLD TO COUNTY CONTRACTORS OR SUBCONTRACTORS TO USE FOR COUNTY CONSTRUCTION PROJECTS.

ETHICS OPINIONS (CONTINUED)

- **2019-07 COUNTY COMMISSION**
 - MAY NOT APPOINT ONE OF ITS OWN MEMBERS TO A COUNTY EMERGENCY SERVICES AUTHORITY WHEN THAT MEMBER WOULD RECEIVE MORE THAN NOMINAL COMPENSATION FOR SERVING ON THE AUTHORITY.
 - OPINION DOES NOT APPLY TO SITUATIONS WHERE THE LAW EXPRESSLY REQUIRES A COUNTY COMMISSIONER TO SERVE ON A BOARD.

ETHICS OPINIONS (CONTINUED)

- **2021-10 A COUNTY COMMISSIONER**
 - THE COUNTY COMMISSIONER MAY NOT BE EMPLOYED BY A CONVENTION AND VISITOR'S BUREAU ("CVB") BECAUSE A COUNTY COMMISSION HAS SOME VOICE, INFLUENCE, OR CONTROL OVER THE AMOUNT OF ITS HOTEL TAX REVENUES THAT THE CVB RECEIVES, AND THE COUNTY COMMISSION APPROPRIATED APPROXIMATELY 43 PERCENT OF THE CVB'S BUDGET.

THANK YOU!

CONTACT INFORMATION



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