

Chapter 4

Personnel

Direct Employees of the County Commission

The county court (commission) of Cabell County in 1965 appointed a person to the position of secretary and assistant to the court. The authority of the court to do this was questioned by the county clerk and the matter was submitted to the circuit court and appealed to the supreme court. The supreme court held that the county court (commission) was without power to make such appointment without expressed authority to do so or in the absence of any statute from which such an authority could reasonably be implied.

The legislature in 1967 amended chapter 7, article 1 of the Code by adding section 3m to this article. Chapter 7, article 1, section 3m reads in part as follows:

In addition to all other powers and duties now conferred by law upon county commissions or tribunals in lieu thereof, hereinafter referred to as county commissions or commissions, such commissions are hereby empowered to employ, fix compensation for and discharge such clerical, stenographic, technical, professional and other personnel, including specialists and consultants, as may from time to time be necessary to aid such commissions in exercising their powers or discharging their duties as provided by law and including a county administrator, to coordinate the commission's activities and to do such other things as the commission may direct: Provided, That such commissions shall not have the power to employ any such personnel to perform powers and duties that are performed by such commissions through their clerks pursuant to law.

Section 3m further requires the commission, not later than March 28 of each year, to determine and fix an aggregate amount for such personnel in the following fiscal year and to make and enter an order stating any action taken in this regard. The commission must also file with the county clerk a statement in writing showing such action and setting forth the name of each person employed under this section, the time for which employed and the monthly compensation.

Until the statements required by this section have been filed, no allowance or payments shall be made by the commission for personnel.

Other County Personnel

The appointment of deputies by the circuit clerk, county clerk, sheriff, surveyor, or assessor is authorized by chapter 6, article 3, section 1, which reads in part as follows:

*(a)(1) The clerk of the supreme court of appeals, or of any circuit, criminal, common pleas, intermediate or county court (commission), or of any tribunal established by law in lieu thereof, may, with the consent of the court (commission), or such tribunal, duly entered of record, appoint any person or persons his deputy or deputies**

(2) A sheriff, surveyor of lands, or assessor may, with the consent of the county commission duly entered of record, appoint any person or persons his deputy or deputies.

Chapter 7, article 7, section 7, provides in part as follows:

*The county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, sheriff, county assessor and prosecuting attorney, by and with the advice and consent of the county commission, may appoint and employ, to assist them in the discharge of their official duties for and during their respective terms of office, assistants, deputies, and employees**

The West Virginia Supreme Court of Appeals ruled in *Hockman v. County Court*, 138 W.Va. 132, that the county commission has the positive authority to consent or refuse to consent to an appointment by a sheriff (or other official) and in exercising such authority is not subject to judicial decision or control and can do so without expressing any reason for such refusal.

The forgoing officers shall, prior to March second of each year, file with the commission a detailed request for appropriation for anticipated or expected expenditures for their respective offices, including the compensation for their assistant deputies and employees for the ensuing fiscal year.

An attorney general's opinion dated February 17, 1976, stated in part as follows:

It goes without saying that a detailed statement of expenditures would require a line-item statement of the amount to be paid to each assistant, deputy and employee, if so required by the county commission, so that the commission can intelligently fix a budget for the ensuing fiscal year. Code 7-7-7 is intended to give a county commission the opportunity to review the overall budget request for certain named county officials, taking into consideration the proposed compensation to be paid the deputies, assistants, and employees of the named official, but it does not give the county commission the authority to set the actual compensation for the deputies, assistants, or employees, even though submitted to the county commission as a "line item" in the official's budget request.

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Chapter 7, article 7, section 7 further provides that prior to March twenty-ninth of each year, the commission shall meet and by order fix the total amount of money to be expended for assistants, deputies and employees of each of the offices heretofore set forth.

Each of the officers listed above is required to file with the county clerk before June thirtieth of each year a statement setting forth the name, or position designation, if then vacant, of each of his or her assistant, deputies and employees, the period of time for which employed, and the persons monthly or semi-monthly compensation. Until this statement has been filed no payment shall be made to any county official or their assistants, deputies and employees.

Each of the officers herein named has the authority to discharge any of his or her assistants, deputies or employees by filing a statement specifying such discharge with the county clerk.

Appointment, employment and discharge of deputy sheriffs and correctional officers covered by civil service are excluded from the foregoing and will be discussed in a later chapter.

Chapter 7, article 1, section 3dd of the Code, enacted by the 1987 legislature, authorized the county commission to establish employee wage and benefit review boards. In the event the commission establishes such a board, the board shall consist of one county commissioner, selected by the commission, the county clerk, circuit clerk, sheriff, assessor, prosecuting attorney and two county employees selected by the commission. If the county has a civil service system one of the employees shall be a member of such system and one shall be a non-member. Each employee member shall be selected from a different county office.

This board shall establish uniform employee salary scales, job descriptions, vacation policies, and other personnel practices which reflect sound, modern administrative practice.

Fringe Benefits

I. Public Employees Retirement System

Legislation providing for a public employees' retirement system was enacted in the 1961 legislative session and has been amended several times. Chapter 5, article 10, section 16 provides for political subdivision participation by, in the case of a county, a two-thirds favorable vote of the county commission. An election to participate may not thereafter be reversed. All West Virginia counties have membership in the system.

All county officers and employees on a full-time basis are included in the system, with the exception of law enforcement sheriff's deputies, which have a separate system. The board of trustees of the system certifies annually to the county commission the percent of the employer contribution which, if paid annually during the members future service, will be sufficient at the time of retirement to provide the required pension amounts. The employer contribution rate is based upon the annual actuarial valuation (5-10-31). The employer's (county commission) rate of contribution is currently 12.5% The member's individual contribution is deducted from his total salary for each payroll period and shall be not less than three and one-half percent nor more than four and one-half percent (currently 4 1/2%). (5-10-29)

Effective July 1, 1998, Chapter 7-14D outlines the specifics of the Deputy Sheriff's retirement system. The County Commission's rate of contribution for this program may not exceed 10 ½ percent (currently at the maximum) and the participating law enforcement deputies' rate of contribution is 8 ½ % of salary. (7-14D-7)

II. Social Security

The state and its political subdivisions are exempt from taxation by the government of the United States, without its consent. The social security tax on the employer has been held to be an excise tax. The state gives its consent by virtue of chapter 5, article 7, section 3, which authorizes the state agency (auditor's office), with the approval of the governor, to enter on behalf of the state, into an agreement with the appropriate federal agency.

Currently that agreement provides for withholding employees contributions and the payments of employer's tax directly to the federal agency by the county in the same manner as required of private employers.

III. Health Insurance

Chapter 7, article 5, section 20 authorizes county commissions to adopt group health insurance plans for county officials and employees. The county may pay any portion of this coverage and/or make payroll deductions to cover premium costs. Upon retiring the officer or employee may remain on the plan if they are willing to pay the entire premium.

The state insurance plan, the Public Employees Insurance Agency (PEIA), is authorized by chapter 5, article 16 of the Code. Counties are eligible for participation in PEIA, and in fact the majority of counties are currently in the system. All employers not operating from the state general fund, which includes counties, have their premium rates calculated on their cumulative experience and these rates are set at a level to pay for the actual costs of coverage. The county contributes to the cost of the employee's premium as it sees fit. These contributions currently run from nothing to 100%.

Any county retiree may choose to obtain PEIA coverage upon retirement, whether the county is or ever was a member of PEIA, by virtue of the county's participation in Public Employees Retirement. In either case the county is responsible for contributing a subsidy for the retiree's coverage at a rate determined by PEIA for all retirees in the system. For counties currently participating in PEIA, this subsidy is built in as part of the active employee's premium. For non-participating counties, PEIA charges the county a subsidy for each of its retirees.

IV. Workers Compensation

Chapter 23, article 2, section 1, provides in part as follows:

The State of West Virginia and all governmental agencies or departments created by it, including boards of education, political subdivision of the state ... are employers within the meaning of this chapter and are hereby required to subscribe to and pay premiums into the workers compensation fund for the protection of their employees and shall be subject to all requirements of this chapter (Chapter 23) and all rules and regulations prescribed by the Commissioner ...*

The forgoing would seem to require a county commission's participation in the fund. The attorney general has ruled in a 1967 opinion that the decision to subscribe or not subscribe is an administrative decision to be made by the county commission.

Failure to participate, however, could under certain circumstances, subject the commission to liability for damages for personal injury suffered by an employee in the course of employment.

Premiums to be paid are established for groups or classes of employers by the workers' compensation commissioner and are based on the claims experience of the group or class.

V. Unemployment Compensation

Chapter 21A, article 5, section 3b, makes any governmental entity, subject to the provisions of this chapter, liable for payments and requires them to pay contributions in accordance with the provisions of said article 5. In lieu of such required contributions the county commission may elect to reimburse the unemployment compensation commission for benefits paid plus one-half of extended benefits paid during each calendar quarter.

The unemployment compensation commission was consolidated into the Bureau of Employment Programs at the 1991 session of the legislature.

The rate of payments into the fund are based on the average annual benefit payments over a three-year period as compared to the assets of the individual account and may vary from year to year.

VI. Annual & Sick Leave

Chapter 7, article 5, section 21 states that any county is authorized to grant county employees annual and sick leave benefits.

*underscoring added.

Miscellaneous

I. Minimum Wage and Maximum Hours

Chapter 21, article 5C, section 1 defines "employer" to include the State of West Virginia, its agencies, departments and all its political subdivisions.

Chapter 21, article 5C, section 2 increases the state minimum and training wage over 3 years: As of July 1, 2006, the rate is \$5.85 per hours; July 1, 2007 the rate is \$6.55 per hour; and July 1, 2008, the rate is \$7.25. The rate hike will only affect approximately 2000 West Virginians because of overriding federal law which covers most workers engaged in interstate commerce. Most importantly this section requires that all departments and agencies of the State of West Virginia re subject to the minimum wage established in this section regardless of federal law, however political subdivisions were not included in this provision, therefore, as established by prior case law, counties and cities would be exempt from this new state minimum wage change, and would continue to be governed by federal law currently fixed at five dollars and fifteen cents (\$5.15).

Maximum hours may not exceed forty hours for a work week unless the employee receives compensation for his employment in excess of forty hours at rate of not less than one and one-half times the regular rate at which he is employed.

Employees of county and municipal governments may receive compensatory time off in lieu of overtime compensation under the following conditions:

- 1) Compensatory time after 40 hours must be at one and one-half hours.
- 2) Compensatory time must be agreed to in writing by both employee and employer before the performance of work and must be recorded in the employer's record of hours.
- 3) Written agreement can be modified at the request of employer or employee.
- 4) No agreement can deny compensatory time the employee has acquired.
- 5) An employee can accrue up to four hundred eighty (480) hours if the employee's work is a public safety activity, an emergency response activity or a seasonal activity.
- 6) All employees engaged in other work may accrue up to two hundred forty (240) hours of compensatory time.
- 7) For overtime work over the 480 hours or 240 hours employees must be paid overtime compensation.
- 8) An employee who has accrued compensatory time off, shall upon termination of employment, be paid for the unused compensatory time.
- 9) Compensatory time must be used within one year from the time it was acquired.

II. Unlawful Practices

The Civil Rights Act of 1964, as amended prohibits discrimination in hiring, firing, promotion, fringe benefits, etc. on the basis of race, color, religion, sex or national origin.

Various other federal statutes prohibit discrimination by reason of age, handicaps, disabilities and require equal pay for men and women performing substantially equal work in the same establishment.

Chapter 5, article 11 of the West Virginia Code establishes a Human Rights Commission for the purpose of encouraging and endeavoring to bring about mutual understanding and respect among all ethnic, racial and religious groups within the state.

Section 3 of this article defines "employer" to mean the state or any political subdivision thereof and any person employing twelve or more persons within the state.

Section 9 of this article makes it unlawful for an employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment by reason of race, religion, color, national origin, ancestry, sex, age, blindness, handicap, or family status.

Complaints are filed with the Human Rights Commission and must go through a lengthy procedure before final determination.

Any person who shall willfully impede or interfere with the commission or its agents in performance of its or their duties shall be guilty of a misdemeanor, fined not less than one hundred nor more than five hundred dollars or imprisoned for a time not exceeding thirty days or both.

The county commission may by an order or resolution authorize the establishment of a Local Human Relations Commission and determine the number, qualifications, and term of its members. The county commission has the authority to appropriate funds for the purpose of contributing to the operation of the local commission.

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Section 3m further requires the commission, not later than March 28 of each year, to determine and fix an aggregate amount for such personnel in the following fiscal year and to make and enter an order stating any action taken in this regard. The commission must also file with the county clerk a statement in writing showing such action and setting forth the name of each person employed under this section, the time for which employed and the monthly compensation.

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The forgoing would seem to require a county commission's participation in the fund. The attorney general has ruled in a 1967 opinion that the decision to subscribe or not subscribe is an administrative decision to be made by the county commission.

Failure to participate, however, could under certain circumstances, subject the commission to liability for damages for personal injury suffered by an employee in the course of employment.

Premiums to be paid are established for groups or classes of employers by the workers' compensation commissioner and are based on the claims experience of the group or class.

V. Unemployment Compensation

Chapter 21A, article 5, section 3b, makes any governmental entity, subject to the provisions of this chapter, liable for payments and requires them to pay contributions in accordance with the provisions of said article 5. In lieu of such required contributions the county commission may elect to reimburse the unemployment compensation commission for benefits paid plus one-half of extended benefits paid during each calendar quarter.

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