

Chapter 5

Criminal Justice and Quasi Judicial Powers

Section 11, article 9 of the West Virginia Constitution provides that county commissions shall, under such regulations as may be prescribed by law have the superintendence and administration of the internal police affairs of their counties.

While the state Constitution gives the county commission the superintendence and administration of the internal police affairs of the county, the phrase "under such regulations as may be prescribed by law" limits such powers and the manner of exercising such powers to those authorized by legislative acts.

Law Enforcement Personnel

Chapter 7, article 14 provides for the appointment and promotion of deputy sheriffs whose primary duties are within the scope of active, general law enforcement. This article provides for the establishment of a civil service commission in each county for this purpose.

The civil service commission of each county is composed of three members, one to be appointed by the county commission, one by the county bar association and one by the deputy sheriffs' association of the county. If either of the latter two fail to make an appointment in a timely manner, the county commission shall make the appointment. The county commission may remove a civil service commissioner at any time for good cause which must be stated in writing and made a part of the record. Chapter 7, article 14, section 3 sets forth the procedures to be followed in this event.

The county commission is required to furnish suitable accommodations, supplies, printing, etc. for the civil service commission and to appropriate sufficient funds for carrying out the provisions of article 14.

Chapter 7, article 14, sections 17a and 17b requires the county commission to allow deputy sheriffs vacation time and sick leave. These two sections set forth the details of both benefits.

Chapter 7, article 14A requires the county commission to purchase a professional liability insurance policy covering all deputy sheriffs whose primary duties are within the scope of active, general law enforcement which provides a minimum of \$50,000 for each person injured or damaged and a total of \$100,000 for each occurrence. The policy is to be paid for out of the county's general fund.

Corrections Personnel

Chapter 7, article 14B establishes a civil service commission for county correctional officers appointed by the sheriff and whose sole duties as correctional officers are within the scope of active operation and management of the county jail. The civil service commission is required only in counties having a population of 25,000 or more. Counties having a population of less than 25,000 may, by order entered of record, provide that the county commission will place correctional officers under civil service and must publish a class II-O legal advertisement stating this fact. If 15% of the qualified voters of the county protest the order by petition signed by them, the order cannot be finalized until ratified by a majority of the legal votes cast with respect to the question of civil service coverage for correctional officers of the county.

The civil service commission shall consist of five commissioners. Two of such commissioners shall be appointed by the bar association of the county, one shall be appointed by the correctional officers association of the county and two of the commissioners shall be appointed by the county commission. In the event the bar association or the correctional officers association fail to make their appointment in a timely manner the county commission shall make such appointments.

The power and duties of the correctional officers' civil service commission is similar in all respects to that of the law enforcement deputies civil service commission.

Corrections

Chapter 7, article 3, section 2 requires every county to provide a suitable jail at the county seat of the county. The county commission of any county may contract with the county commission of one or more other counties of the state for the erection, construction, equipment, leasing and renting of a regional correctional center for either adult or youth offenders at a location mutually agreeable to the contracting parties and not necessarily at a county seat.

The county commission must keep the jail in constant and adequate repair, heat, light, janitor service and such other things as shall be necessary.

Section 2 also provides that a county commission providing and maintaining a jail on April 8, 1989 shall not be required to provide and maintain a jail after a regional jail becomes available pursuant to chapter 31, article 20. Chapter 31, article 20, section 9 (4)(b) contains similar language and in addition thereto permits the county commission to provide and maintain a holding facility which complies with the standards set forth in the legislative rules promulgated by the jail and correctional facility standards commission. The legislative rules for holding facilities promulgated by the jail and prison standards commission are very comprehensive and contain 42 pages of requirements for the facility. A county commission, in lieu of establishing a separate holding facility, may utilize the regional correctional facility.

A regional jail and correctional facility authority, (hereinafter referred to as the regional jail authority) is established by chapter 31, article 20 of the Code. The authority is composed of seven members, three of which must be county officials appointed by the governor. The authority is required to specify groups of counties within the state to be formed into regions for the establishment of regional jails.¹⁰

As these regions are formed, there is to be established in each region a regional jail commission. This commission is composed, in part, of the sheriff from each county in the region or his (or her) designated representative, a member of each county commission from each county in the region, to be chosen by the county commission, or a designated representative and other members, spelled out in chapter 31, article 20 section 6. The functions and duties of this commission are set forth in chapter 31, article 20, section 7 of the Code.

Chapter 31, article 20, section 10(g) provides that after a regional jail facility becomes available for the incarceration of inmates, each county within the region must incarcerate all persons whom the county would have incarcerated in the county jail prior to the availability of the regional jail facility in the regional jail facility except those housed in a local holding facility.

When inmates are placed in a regional jail facility as provided in the preceding paragraph, WV Code § 31-20-10(h) requires that the county shall pay into the regional jail and development fund a cost per day for each inmate so incarcerated. This per diem charge is to be determined by the regional jail authority.¹¹

Home Confinement

As a condition of probation or as an alternative sentence to another form of incarceration a circuit court may order an offender confined to the offender's home for a period of home confinement. A magistrate may do the same except that the confinement must be electronically monitored.

An offender so confined must pay a home detention fee set by the court. The sheriff must establish a special fund designated the home confinement service fund. The circuit clerk, for the circuit court, and the magistrate clerk for the magistrate court, pays all home confinement fees to the sheriff for deposit into this fund. The county commission appropriates money from the fund to administer the fund, including the purchase of electronic monitoring devices. The county commission may supplement the fund with additional appropriations. WV Code §62-11B-7 authorizes County Commissions to expend any surplus money, certified in writing by the fund's administrator, at the end of the fiscal year to defray the cost of housing County inmates in County or Regional jails.

The county commission may employ one or more persons, with the approval of the circuit court as a

10 See appendix - J for map of regional jails.

11 See appendix - K for supreme court ruling on regional jail participation.

home confinement supervisor or the county commission may designate the sheriff to supervise the offenders ordered to undergo home confinement and to administer the program.

WV Community Corrections

In chapter 62, article 11C, section 1, the legislature has given county commissions the authority to develop, establish and maintain community-based corrections programs to provide the judicial system with sentencing alternatives for those offenders who may require less than institutional custody. Any county may establish and operate an approved community corrections program to provide alternative sanctioning options for an offender who is convicted of an offense for which he or she may be sentenced to a period of incarceration in a county or regional jail or a state correctional facility and for which probation or home incarceration may be imposed as an alternative to incarceration.

Community corrections programs authorized by 62-11C-5 may provide, but are not limited to providing, any of the following services:

- (1) Probation supervision programs;
- (2) Day fine programs;
- (3) Community service restitution programs;
- (4) Home incarceration programs;
- (5) Substance abuse treatment programs;
- (6) Sex offender containment programs;
- (7) Licensed domestic violence offender treatment programs;
- (8) Day reporting centers;
- (9) Educational or counseling programs; or
- (10) Drug courts.

Quasi-Judicial Powers

Chapter 7, article 1, section 3, grants to the county commissions jurisdiction in all matters of probate, appointment and qualification of personal representatives, guardians, committees, curators and settlements of their accounts and in all matters relating to apprentices.

Probate of Wills, Personal Representatives, etc.

Chapter 41, article 5, section 4 gives jurisdiction to county commissions of the probate of wills and sets forth certain rules as to the county in which such act takes place. Sections 5 through 18 of this article provides procedures and other details in the probate of the will.

Chapter 44, article 1, provides for the giving of a bond before the county commission by the executor of an estate or personal representative. Section 15 of this article sets forth the duties of a personal representative.

Chapter 44, article 1, section 4 gives jurisdiction to the county commission in determining the right of administration of an estate in the event a person dies intestate.

Chapter 44, article 1, section 5 provides for the appointment of a curator by the county commission. Article 3 of this chapter provides for the appointment of fiduciary commissions by the county commission and article 3A provides an optional system in which a fiduciary supervisor is appointed by the county commission.

Chapter 58, article 3, section 1 provides for an appeal to the circuit court as to the qualification of a personal representative, guardian or committee and the settlement of their accounts.