

# Chapter 6

## Elections

The WV Constitution states that county commissioners shall be the "judge of elections" of local offices until otherwise prescribed by law (article 9, section 11). Chapter 3 of the state code outlines the bulk of the duties and powers of commissioners with regard to elections.

Generally, elections are the purview of the county and circuit clerks. There are, however, a number of areas that affect the county commission directly. Only those that directly affect the county commission will be addressed.

### Voter Registration

By law the county commission is charged with the responsibility of being the chief voter registration authority in the county, subject to the authority of the secretary of state. The county clerk, in fact, performs most of the registration functions. The commissions are charged with investigation of matters with regard to voter registration (§3-2-4), including a voter's contesting of a registration matter. A voter may appeal these Commission decisions to the circuit court.

Chapter 3, article 2, section 9 of the Code authorizes the county commission, at its discretion, to bi-annually appoint registrars whose duty it is to register qualified voters currently not registered and to check and if necessary to correct current registration records according to directions prescribed by the secretary of state. This article requires the county commission to fix a rate of compensation for the registrars at a rate not less than the federal minimum wage and to pay travel expenses.

### Voting Systems

In lieu of paper ballots, counties may use any voting machine or system approved for use by the state election commission (3-4-7 and 3-4A-8). Counties may adopt the use of any of these systems following the procedures outlined in chapter 3, article 4 and 4A. Adoption of any one of these systems should be undertaken roughly 6 months prior to ballot preparation to allow adequate time to implement the change. It is the responsibility of the county commission to supply the machines, voting devices, tabulators, and other equipment necessary to operate these voting systems, which must meet minimum requirements as outlined in the code. These machines are in the custody of the county clerk.

### ***I. Voting Machines (Chapter 3, article 4)***

Not less than five days prior to an election, and after the clerk has completed preparation of the mechanical voting machines, the county commission and the ballot commissioners convene to examine the machines. If the machines are found to be in proper order, the county commission endorses the county clerk's actions (§3-4-12). Once the machines are placed in the polling places, a county commissioner is to be available to make corrections to machines if necessary. After the election the county commission retains the keys to the machines until seven days after the canvass is completed, at which time the keys are turned over to the county clerk (§3-4-26).

### ***II. Electronic Voting Systems (Chapter 3, article 4a)***

With electronic voting systems, the county commission must also make an examination 5 days prior to the election, but there must be published public notice not less than three days before hand. If the devices and ballot cards are in proper order, the commissioners endorse the county clerk's action. (§3-4a-13). Also, with electronic machines, the machines must be secured in a double locked room to which the president of the commission has one key. That commissioner must certify that the devices were found sealed prior to their conveyance to the polls. Tabulating equipment used must be certified free of error by the county commission prior to the election (§3-4A-26). Commissioners must also be present for testing the tabulators immediately before and after the vote count. After the election all election materials are to remain sealed for seven days following the canvass, except as is necessary to conduct the canvass.

Chapter 3, article 4, section 2 and article 4A, section 31, authorizes a county adopting any of the foregoing alternate voting systems to make such systems available to municipalities for use in their elections. (§3-4-29).

## **Magisterial Districts**

The magisterial districts in the county are laid out by action of the county commission (§7-2-2). While these districts themselves perform no governmental function, they do pertain to residency requirements for candidates running for county commission, school board, and executive committees. A county may have 3 to 10 districts, which are to be as nearly equal in size and population as possible. They must be altered after each U.S. census, if necessary, to meet U.S. Constitutional requirements as well. Before the commission takes action to change the magisterial boundaries, the public must be given 30 days' notice by posting at the courthouse and in the affected districts.

## **Precincts**

When the legislature realigns the state senatorial and house of delegates districts in the state, the county commission must realign precincts in the county to assure that precincts do not contain more than one senatorial or house district within their boundaries (§1-2-2B). Precinct boundaries should also coincide with municipal boundaries, unless the commission finds it impractical to do so (§3-1-5). Otherwise the commission may change precinct boundaries if it feels public convenience requires such a change.

No change, however, can be made less than 90 days before an election, except in an emergency (§3-1-7), and public notice must be given via publication at least one month prior to the change. The commission must assure that voters in the effected precincts are properly registered. The commission must keep a record of precincts in the county clerk's office and this book must be available to the public as much as is reasonable (§3-1-7). A precinct map must also be available to the public.

The size of precincts is governed by chapter 3, article 1, section 5. In urban areas the minimum size is 300 voters and the maximum are 1500. In rural areas the minimum is 200 and the maximum is 700. The 200 minimum can be waived with approval of the secretary of state. In counties with electronic voting systems, these specifications apply (§3-4A-30). In counties with mechanical voting machines these limits do not apply (§3-4-28).

## **Polling Places**

It is the responsibility of the county commission to assure that a suitable polling place is provided for each precinct in the county. Any changes in polling places must be made 90 prior to the election, unless in an emergency as approved by the Secretary of State (§3-1-7). The commission may have more than one polling place in one building as long as each polling place is operated separately, and the precincts are contiguous. State law requires one polling place per magisterial district be handicapped accessible, but federal law requires accessibility except in emergency situations or when facilities are simply not available.

## **Election Procedure**

### ***I. Ballots***

The board of ballot commissioners are responsible for providing ballots of elections in the county unless it is a special election called for by the state, a city, or a board of education, in which case those entities provide the ballots. The board of ballot commissioners is comprised of the county clerk and two appointees of the clerk from nominations of the two major political parties. (3-1-19)

### ***II. Election Officials***

County commissioners must appoint as election officials those nominated by the county executive committees of the two major parties, and in addition select one additional person to serve on each board of election officials. The commission also fills positions where no nominations were received. The commission also appoints alternates as nominated by the executive committees but may appoint additional alternatives to serve after the nominated pool of alternates is exhausted. These appointments are made at least 49 days prior to the election (§3-1-30).

Chapter 3, article 1, section 28 outlines the criteria that must be met to serve as an election official. This same section details the circumstances under which a county commission may suspend an election worker. Section 44 states that the county may compensate election officials up to \$125 for training, and \$175 per election and ballot commissioners up to \$125 a day for up to 10 days service. The state compensates the county for specific special elections after approval of expenses by the secretary of state.

### **III. Early Voting**

Chapter 3-3-3 outlines criteria for early voting in-person. The county commission shall designate the courthouse or annex as the primary location for early voting. In addition, the county commission may, with approval of the county clerk or other election official, and with the agreement of the chair persons of the county executive committees of the two major political parties, designate additional locations for early voting other than the courthouse or courthouse annex (3-3-2a). The additional locations shall comply with all requirements for early in-person voting and the criteria prescribed by the Secretary of State. The voting period for early in-person voting is to be conducted during regular business hours beginning on the 20<sup>th</sup> day before the election and continuing through the 3<sup>rd</sup> day before the election. For any election held on Tuesday, the early voting period for in-person voting is to be available for 9:00 am - 5:00 pm on two Saturdays prior to the election.

### **IV. Emergency Absentee Voting**

The county commission appoints the emergency ballot commissioners who undertake the receipt of ballots cast in emergency situations as described in chapter 3, article 3, section 5c. The county commission may adopt a policy to extend emergency absentee voting procedures to medical facilities and nursing homes in the general proximity to the county.

### **V. Canvass**

The county commission serves as the board of canvassers to ascertain the true results of the election. The secretary of state provides procedures for the conducting of canvassing for the various voting systems. Candidates or their party representative, as well as the public, may be present during the canvassing procedure (§3-4-26).

Chapter 3, article 6, section 9 describes the canvass and recount procedure. The board of canvassers convenes on the Friday following a primary election, and on the fifth day after a general or special election (excluding Sunday). (3-5-17) A majority of commissioners must be present to proceed and the public is allowed to be present. The board must keep a complete record of its proceedings in ascertaining election results. The board must correct vote counts that are the result of errors resulting from malfunction of or tampering with the voting machines.

The county commission, serving as the board of canvassers, must determine at the time of canvassing whether or not a challenged vote is to be counted or not. In making these determinations the commission should disregard technical errors, omissions, or oversights (§3-1-41).

After canvassing, the board declares the results of the election, but does not certify them for 48 hours. During this 48-hour period, a candidate may demand a recount ((3-6-9) A primary election's results shall be recorded as outlined in chapter 3, article 5, section 17. The form to use for certificates for general or special elections are described in chapter 3, article 6, section 10. These certificates are sent to each candidate in the election within 30 days of the election (or recount, if performed). Certificates go as well to the secretary of state in the case of state offices and the governor in the case of national offices.

## **VI. Recount**

When a recount is demanded, the board must follow notification and time-line procedures that are outlined in chapter 3, article 6, section 9. With electronic voting, recounts are done in the same manner the original count was made (§3-4A-28). Any candidate requesting a recount must provide a bond of up to \$300 to cover the cost of a recount in the event the result of the election is not changed by the recount.

## **VII. Contesting of Election**

Any candidate may contest an election procedure practice or result to the county commission. Contests of an election by a non-candidate are also decided by the county commission (§3-5-20 and §3-7-6).

Once notification of the contested result is properly made, the commission must take up the issue at its next scheduled meeting. The commission must make a determination with regard to the contested issue within three months of the time the election results were reported, and their decision is appealable, by either party, to circuit court. The appeal must be made within 30 days of the commission's order and a bond, as set by the county commission, must be paid. The circuit court decision is appealable to the state supreme court (§3-7-7).

The commission may adjust vote counts based on the evidence brought forth in making a determination of a contested vote (§3-7-8).

Ballot materials are retained for 22 months, unless there is a pending contest of an election.

## **Tampering and Neglect**

County commissioners, as well as the other officials involved in elections, may be compelled to perform their duties subsequent to a writ of mandamus (§3-1-45). Tampering with voting machines or neglect of duty with regards to voting machines is a crime and subject to fines, imprisonment, or both. Altering ballots is also a criminal offense and subject to imprisonment. Furthermore, an election official who knowingly makes a false statement in their capacity as such, is subject to fines and imprisonment.

# Chapter 7

## State and Other Local Government Entities

### State Agencies

County commissions interact with a number of state agencies which have been mentioned elsewhere in this text. They include the State Auditor's Office, Department of Tax & Revenue, Secretary of State, Division of Corrections, Regional Jail Authority, WV State Supreme Court, WV Development Office, Public Employees Insurance Agency, Public Employees Retirement System and the state legislature.<sup>1</sup>

Other state agencies that have not been mentioned elsewhere include:

***Attorney General's Office*** - Most often the WV Attorney General's Office is utilized when the county seeks an opinion on a legal question. These requests are generally made through the county prosecutor's office.

***Ethics Commission*** - This office enforces the state ethics act (chapter 6B, article 1) and renders advisory opinions with regards to potential violations of the ethics act. Its authority includes investigatory powers upon receipt of a written verified complaint.

***Division of Environmental Protection (DEP)*** - The DEP was created by Executive Order #8-92. Through its Office of Waste Management, and at the direction of the legislature, DEP has authority to promulgate rules and regulation for the control of solid waste in the state.

### State Appointments of County Commissioners

There are various boards and commissions that county commissioners are appointed to by the governor or other state agencies. They may be the result of legislation or administrative action. These appointments are often made at the recommendation of the County Commissioners' Association of West Virginia or the West Virginia Association of Counties. Appointments may be on an ad hoc basis and only meet for a defined amount of time. Listed below are only the boards or commissions that legislation has specifically named a county commissioner to.

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<sup>1</sup> See Appendix - L for listing of state agency phone numbers.

***Prosecuting Attorney's Institute (§ 7-4-6)*** Two County Commissioners sit on this seven-member executive council that oversees and develops the duties and responsibilities for the WV Prosecuting Attorney's Institute. The committee appointments are submitted by the County Commissioners' Association annually.

***Jail Standards Committee (§31-20-8)*** Three commissioners sit on this eleven-member board which sets standards for the state's jails, prisons and holding facilities. Appointed by the governor from recommendations made by the County Commissioners' Association of WV.

***Regional Jail Authority (§31-20-3)*** Three County officials sit on this seven-member board which oversees and sets policy for the operation of the state's regional jails. Appointments are made by the governor.

***Property Valuation Procedure and Training Commission (§11-1C-3)*** Two commissioners sit on this commission whose function is to set guidelines and generally oversee the completion of property reappraisal as mandated in 1990 Legislation. Appointments are made by the governor after recommendations are made by the County Commissioners' Association.

***Emergency Medical Services Advisory Council (§ 16-4C-5)*** One commissioner is appointed to this council for a three-year term by the Governor, from names submitted by the County Commissioners' Association of WV. The purpose of this council is to develop standards for emergency medical service personnel and for the purpose of providing advice to the office of emergency medical services and the commissioner with respect to reviewing and making recommendations for and providing assistance to the establishment and maintenance of adequate emergency medical services for all portions of this state

***Public Health Advisory Council (§16-1-16)*** One commissioner will serve on this council which was created to act as an advisory body to the Health Commissioner for the purpose of advising the commissioner as to the provision of adequate public health services for all areas in the state. Appointment is made by the governor after recommendations are made by the County Commissioners' Association of WV.

***Records Management & Preservation Board (§ 5A -8-15)*** One commissioner will serve on this board whose function is to set guidelines and generally oversee the management and preservation of county records across the state. Appointment is made by the governor after recommendations are made jointly by the County Commissioners' Association of WV and the WV Association of Counties.

***WV Courthouse Facilities Improvement Authority (§ 29-26-1)***

Two County Commissioners will serve on this twelve-member authority, the President of CCAWV and one commissioner from a different congressional district appointed by the President of CCAWV. The purpose of this Authority is to develop comprehensive, uniform guidelines for use by the Authority in evaluating any request by a county for funding assistance for the modification of an existing courthouse facility or the construction of a new county courthouse facility.

## Appointments Made by County Commissioners

County commissioners are involved in appointing members to various boards and commissions at the local and regional level as authorized by the legislature. These appointments may be made by virtue of a legislative mandate, e.g. the solid waste authority, or may be by virtue of the formation of a local board as allowed by the legislature.

Some boards require a county commissioner as a member, e.g. county fire board. Often county commissioners, though not mandated to serve on a particular board, will find themselves as the appointed member. Authorization for some of these boards and commissions may have been granted with a specific situation in mind and therefore are not often created in most counties. Listed below are boards and commissions to which county commissions make appointments. In addition to the listings below, commissioners often serve on local ad hoc committees.

**County Coordinating Committee (§7-1-3j)** The purpose of this committee is the coordination of county improvement programs with state and federal programs and it is created at the will of the county commission. There are no restrictions as to the number or make-up of appointees.

**County Appraisal-Assessment Board (§7-1-3l)** This is an advisory board authorized to review all appraisals made by the tax department and assessments made by the assessor, and whose purpose is to advise the county commission. There are no restrictions as to number or makeup of members. It is created at the will of the county commission.

**Commission on Intergovernmental Relations (§7-1-3q)** This body's purpose is to disseminate information concerning federal programs which provide financial assistance to residents of the county. Appointees consist of all county commissioners and any other members they wish to appoint. This commission is mandated by state law.

**Commission on Crime Delinquency and Correction (§7-1-3r)** This commission is to collect and compile in the county information pertaining to the criminal justice system, and through working with the state and federal agencies make recommendations to improve the criminal justice system. Appointees consist of all county commissioners and any other members they wish to appoint. This commission is also mandated by state law.

**Beautification Councils (§7-1-3w)** These councils are formed to improve the aesthetic qualities of the landscape in the county. It is created at the will of the county commission and appointees are as selected by the county commission.

**Hazardous Material Response Team (§7-1-3aa)** This group's purpose is to respond to hazardous material accidents. It is created at the will of the county commission, who may appoint any qualified personnel.

**Parks and Recreation Commission (§7-11-1)** This commission, created at the will of the county commission, is for improving, creating, or maintaining county parks and recreation centers. This eleven-member commission is selected by the county commission.

**Museum Commission (§7-11A-1)** The purpose of this commission is as described in the ordinance creating it, which can include the right of eminent domain to preserve historical or archeological sites. Its five to ten members as selected by the county commission. It is created at the will of the county commission alone or in conjunction with a municipality.

**Development Authority (§7-12-1)** The authority's purpose is to promote economic welfare. The county commission creates this authority and one county commissioner must serve on the 12-21-member board which it appoints.

**Community Action Agency (§7-13-6a)** If a county commission has been designated as a Community Action Program Agency pursuant to Title II of the Federal Economic Opportunity Act, then it may in-turn appoint a governing board to administer the program. The county may also provide financial and in-kind support to other recognized programs as long as it is toward that agencies federal matching requirement.

**Civil Service Commission for Deputy Sheriffs (§7-14-3)** This body prepares position classification and promotion plans for deputy sheriffs, as well as rules and regulations for applying for the position of deputy sheriff. It may also make investigations with regards to the enforcement of the civil service law for deputies. The commission is composed of one member each selected by the county commission, the deputy sheriffs' association and the local bar association and is mandated by state law for all counties. This commission must make an annual report to the county commission reviewing its past year's activity.

**Civil Service Commission for Correctional Officers (§7-14B-3)** This commission's purpose is to prepare a position classification and promotion plan for correctional officers, as well as to make rules and regulations with regard to applying for a position as a correctional officer. It may also initiate investigations with regard to the application of civil service laws to correctional officers. It is made up of five members, two each selected by the county commission and the bar association of the county, and one by the correctional officers association. It is mandated by state law for counties with a population of 25,000 or more.

**Emergency Ambulance Authority (§7-15-4)** This authority is to provide and maintain emergency services. It is created by a county alone or in conjunction with other counties and cities and is composed of five to fifteen members as selected by the creating bodies.

**County Fire Board (§7-17-6)** These boards are formed to improve fire service protection, including setting funding priorities and petitioning the county commission for funds. Upon request of the county fire association the county commission may create a fire board. Its members consist of one county commissioner, three members of the fire association selected from a list of five names submitted by the fire association, and three citizen members. All members are appointed by the county commission.

**Planning Commission (§8-24-1)** A county or city has the authority to establish a planning commission, which is then charged with the creation of a comprehensive plan for the physical development of the county. This plan must be submitted to the county commission for adoption before being put into effect. The county commission is obliged to provide funds for the operation of a planning commission. The commission consists of 5-15 members, appointed by the county commission, one of which must be a county commissioner.

**Historic Landmark Commission (§8-26A-4)** Counties may establish and fund these commissions that are made up of five members appointed by the county commission.

**Urban Mass Transit Authority (§8-27-4)** Counties alone or with cities or other counties may form these authorities. There are no guidelines as to the makeup or function of these bodies.

**County Airport Authority (§8-29A-1)** The county commission may appoint a board of five members, one of which must be a commissioner, that would be authorized and empowered to establish and maintain a public airport.

**Building Authority (§8-33-1)** Counties alone or with cities and other counties form these authorities. The commission appoints the five members unless it is a joint authority in which case each county appoints 3 members.

**Library Board (§10-1-5)** If the county chooses to establish, equip or maintain a public library, alone or with other governmental authorities, they must appoint a board. The board is comprised of five members appointed by the county commission, unless it is a regional board, in which case the board consists of 5-10 members with each county represented.

**Local Emergency Planning Commission (§15-5a-7)** Each county has a Local Emergency Planning Commission (LEPC) that is responsible to the WV Emergency Response Commission. A county commissioner, or designee, serves as a member of this local commission. Other members are appointed by the state after being recommended locally. In addition to its other duties, the LEPC is responsible for developing and implementing a comprehensive emergency response plan in accordance with federal law.

**County Health Officer (§16-2-1)** It is the county commission's responsibility to recommend to the state department of health a legally qualified physician who serves as the county health officer.

**Combined Board of Health (§16-2-3)** A county can join with other counties and cities to form a multi-jurisdictional health board. Each participating governing body appoints 1 to 3 persons to serve on the combined board.

**Public Service Districts (§16-13A-3)** County commissions are given the authority, on their own motion or by virtue of a petition, to create public service districts to provide water, sewage or gas to

defined communities in the county. Commissions may also alter PSD's to the benefit of the county. In either case a public hearing must be held. After its creation a PSD is considered a political subdivision of the state and may issue bonds, but it must file a copy of its annual budget and audit with the county commission. The state public service commission provides assistance and oversees the operation of PSD's.

PSD's must consist of at least three members. Appointments are made by either the cities within the district or the county commission, based on the population of the cities involved.

In 1986 the legislature ordered plans developed for possible consolidation of the PSD's. If the county commission did not develop a plan, then the public service commission was to develop a plan, seek county commission input, approve the plan and have it implemented by the county commission. In 1993, plans in many counties were still in various stages of development.

***Solid Waste Authority (§22C-4-3)*** Each county must have a Solid Waste Authority (SWA) or belong to a regional authority. There are five members of a county SWA, two of which are appointed by the county commission. SWA's are required to develop a comprehensive litter and solid waste control plan as well as a timetable for its implementation. These plans are approved by the state Solid Waste Management Board. Funding for SWAs' is provided by §7-5-22, which authorizes county or regional SWAs' to impose a solid waste assessment fee at a rate not to exceed fifty cents per ton or part thereof upon the disposal of solid waste in that county or region. All assessments due shall be applied to the reasonable costs of administration of the county's regional or county solid waste authority including the necessary and reasonable expenses of its members, and any other expense incurred from refuse cleanup, litter control programs, or any solid waste programs deemed necessary to fulfill its duties.

***Fiduciary Supervisor (§44-3A-3)*** The county commission may appoint a fiduciary supervisor whose role is to supervise all fiduciary matters. The county commission sets the supervisor's salary and must set up a special fund to receive all moneys collected by the fiduciary, from which salaries and expenses may be paid.

***House Authorities (§16-15-3)*** Chapter 16, article 15, section 3 of the Code authorizes county commissions to create a housing authority when they perceive the need or when petitioned to do so by twenty-five residents of the county asserting that there is need for an authority. Chapter 16, article 15, section 3a, allows for city and county housing authorities to merge to form a regional housing authority. A merger may be initiated by joint resolution including transfer of assets and liabilities.

***Farmland Protection Board (§8A-12-2)*** The county commission of each county may adopt and implement a farmland protection program within the county. The county commission will appoint a seven-member board (as specifically spelled out in 8A-12-4) which shall administer on behalf of the county commission all matters concerning farmland protection. The county commission has final approval authority for any and all purchases of easements for the farmland protection program by the board.

## Other County Entities

In addition to county government, the other two major political sub-divisions in the county are municipalities and the boards of education.

### ***I. Municipalities***

Chapter 7, article 1, section 3i allows counties to join with municipalities, as well as other counties and the United States government to carry out any of its powers, duties, and responsibilities as long as it does not conflict with the Constitution. This section also allows for reciprocal agreements with out-of-state jurisdictions for the protection of people and property from fire and for medical equipment and personnel for such purpose.

The county tax department collects property taxes for the municipalities and conducts their elections. Municipalities are responsible for the expense of their elections not held in conjunction with a primary or general election.

With regard to annexation, a city may annex part of the county in one of the following ways (chapter 8, article 6):

1. By majority vote of both the municipality and the area to be annexed. Once certified the county commission enters an order approving the annexation.
2. By petition of a majority of both qualified voters and freeholders of the annexation area. Upon verification of the petition the county commission enters an order of approval.
3. By request of a "minor boundary adjustment". In this case the municipality request the county commission to approve the annexation. In making a final decision the county commission shall at a minimum, consider the following factors:
  - 1) Whether the proposed territory is contiguous to the municipal city limits.
  - 2) Whether proposed annexation is limited solely to Division of Highways right-of way or whether Division of Highway holds title to the property in fee.
  - 3) Whether affected parties oppose or support the proposed annexation.
  - 4) Whether the proposed annexation consists of a street or highway and one or more free holders.
  - 5) Whether the proposed annexation consists of a street or highway without a freeholder but is necessary for providing emergency services.
  - 6) Whether another municipality has requested an annexation of the same territory.
  - 7) Whether the annexation is in the best interest of the county as a whole.

The final order of the county commission shall include the reasons for the grant or denial of the proposed annexation. Municipalities bear any costs associated with this procedure.

## ***II. Boards of Education***

As with municipalities the county collects property taxes for the board of education. Also, as with municipalities, the county is responsible for conducting school board elections. When a Board holds a special election, it must pay for the cost of conducting that election.