

OFFICE OF THE
PROSECUTING ATTORNEY
CALHOUN COUNTY, WEST VIRGINIA
Shannon S. Johnson, Prosecutor

Calhoun County Courthouse
P.O. Box 337,
Grantsville, WV 26147

Telephone: 304-354-6170
Fax: 304-354-6703
Secretary, April Wilson

Calhoun County Commission
P.O. Box 230
Grantsville, WV 26147

February 8, 2018

RE: Clarification of Full Time Status of Prosecuting Attorney

Dear Honorable Commissioners:

It is my understanding that the Commission will vote to finalize the Levy Call regarding the Prosecuting Attorney on Monday at your upcoming meeting. I have read some misstatements of the law posted to social media and as your Legal Counsel, I would like to offer some clarification.

As of January 1, 2009, "a county *may not* have a part-time prosecutor." W.Va. Code §7-7-4a(a). Now that the County Commission voted to make the prosecuting attorney position in Calhoun County full-time status, the position will not return to part-time, even at the end of the current term, unless by *mutual agreement* of the Prosecuting Attorney and the County Commission.

Thus, now that the commission has made the position full-time, two things must happen for the position to return to part-time: 1) the elected prosecutor must request the position return to part-time and 2) the county commission must approve that change.

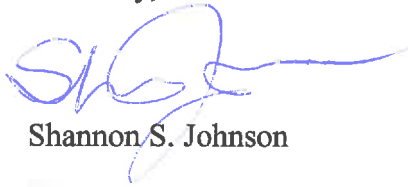
In essence, regardless of whether the proposed levy call passes, the County Commission will still be responsible for funding a full time prosecuting attorney by some means.

The compensation of prosecuting attorneys is also set forth by State Code in W.Va. Code §7-7-4a. The second sentence of the statute, enacted by our State Legislature, notes that the county commissions of Class VI through X "shall then compensate all prosecuting attorneys that have changed to full-time by virtue of this section at the same rate of compensation established for a prosecuting attorney in a Class V county."

If the Commission feels that running a separate levy to fund the prosecuting attorney salary is prudent, as opposed to a levy for something much more marketable such as courthouse maintenance or for county park funding, I wanted you to be aware that the Commission would still be responsible for finding funding for the position from some source.

If you have any questions, please feel free to contact my office.

Sincerely,



Shannon S. Johnson



§7-7-4a. Authorizing the option of full-time status for part-time prosecuting attorneys.

(a) On or before the first day of January, two thousand nine, a county may not have a part-time prosecutor. The county commissions of counties in Class VI through X shall then compensate all prosecuting attorneys that have changed to full-time by virtue of this section at the same rate of compensation established for a prosecuting attorney in a Class V county: Provided, That, upon mutual agreement of the prosecuting attorney and the county commission, the prosecuting attorney may choose to remain a part-time prosecuting attorney.

(b) If, after the first day of January, two thousand nine, during the course of a term of office, pursuant to subsection (a) of this section, any prosecutor who becomes full-time or chooses to remain part-time who believes that the responsibilities of his or her office either no longer requires a full-time position or believes that the duties of the part-time position have become full-time, may, by mutual agreement with the county commission, either return to part-time status or change to full-time status: Provided, That, if the decision to change to full-time or part-time status is made during an election year, the decision must be by mutual agreement between the county commission and the prosecutor-elect: Provided, however, That any prosecutor who returns to part-time status shall, thereafter, be compensated at the rate of compensation set forth in section four of this article for a prosecuting attorney of his or her class county and any prosecutor that changes to full-time status shall, thereafter, be compensated at the same rate of compensation established for a prosecuting attorney in a Class V county.

(c) If, after the first day of January, two thousand nine, any prosecutor or prosecutor-elect desires to change to full-time status and the county commission objects to such change due to an alleged financial condition of the county, then either party may request the State Auditor's office to examine the county's financial condition and certify whether or not there are sufficient funds to support a full-time position. The State Auditor shall then, within ninety days of such request, certify whether or not there are sufficient funds available to support a full-time prosecutor in the county. If the State Auditor certifies that there are sufficient funds available, then the prosecutor or prosecutor elect must be changed to full-time status and be compensated at the same rate of pay as a prosecutor in a Class V county.

(d) Nothing in this section may be construed to prohibit a part-time prosecuting attorney from remaining part-time with the mutual agreement of the county commission.