

CHAPTER 209
FORMERLY
HOUSE BILL NO. 276

AN ACT TO AMEND THE DELAWARE CODE RELATING TO COUNTY COMPTROLLERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 93, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~CHAPTER 93. COUNTY COMPTROLLERS.~~

~~§ 9301. Election, qualifications and term.~~

~~There shall be a County Comptroller for Kent County who shall be a resident of the County. The Comptroller shall be elected at the general election in each 4th year at which the Governor is elected, by the voters of the County qualified to vote for members of the General Assembly. The Comptroller shall hold office for the term of 4 years, commencing on the 1st Tuesday in January next succeeding the Comptroller election, or until the Comptroller successor shall be duly qualified.~~

~~§ 9302. Bond.~~

~~(a) Before entering upon the duties of the county comptroller's office, the county comptroller shall give bond to the State with 1 or more sureties to be approved by the Resident Judge of the Superior Court of the State of the county of the comptroller, in the sum of \$10,000, conditioned for the faithful performance of the duties of the office, and such bond shall have attached thereto a warrant for the confession of judgment thereon.~~

~~(b) The bond and warrant shall be forthwith transmitted by the Judge to the clerk of the peace of his or her county, to be by the clerk of the peace recorded and safely kept. The clerk of the peace, whenever in his or her judgment the public interest demands, or whenever the receiver of taxes and county treasurer or the elected officials of the county governing body or a majority of them shall so request, shall cause judgment to be entered on the bond in the Superior Court of the county of the comptroller.~~

~~§ 9303. Oath.~~

~~Every person elected or appointed to the office of county comptroller shall, before entering upon the duties of that person's office, take and subscribe before the Resident Judge of the Superior Court the oath or affirmation prescribed by the Constitution.~~

~~§ 9304. Vacancy; appointment of successor.~~

~~In case of the death, resignation, refusal to act, inability to give bond, or removal from office of any person elected or appointed comptroller, or whenever a vacancy shall occur in the office from any cause, the Governor shall appoint a competent person to act as county comptroller during the residue of the term in which the vacancy shall happen, and such person so appointed shall be subject to all the provisions of law respecting the office.~~

~~§ 9305. Duties and powers.~~

~~(a) The county comptroller shall audit all the accounts of the county government and countersign all warrants drawn by order of the county government for the payment of money.~~

~~(b) No money shall be paid out of the county treasury for county purposes except on warrants drawn by order of the county government signed by the President of the county government and countersigned by the comptroller. Interest coupons on the bonded debt of the county shall be paid on presentation.~~

~~(c) The comptroller shall also, at least once in every month, inspect the books and accounts of the receivers of taxes and county treasurers in each of the counties, respectively, and audit the same and report the result of such audit to the county government. Such audit shall be made at the offices of the receivers of taxes and county treasurers, respectively.~~

~~(d) The comptroller shall annually audit, inspect and examine the books, accounts, papers, records and dockets of the following officers of the comptroller's county: clerk of the peace, sheriff, recorder, register of wills and other county officers, and ascertain the amount due the comptroller's county in fees; and the comptroller shall report in writing to the county government of the comptroller's county. The county government shall cause such report to be entered at large upon its minutes and published in pamphlet form for distribution.~~

~~(e) Annually the Comptroller for Kent County shall examine the books of all public institutions within the County which are supported wholly or in part by such County, and shall report the result of such audit to the county government.~~

~~(f) The comptroller shall also keep a book or books of accounts, in which shall be entered all items of expenditure, all warrants drawn, to whom made payable and for what particular work or other cause. All written contracts made by the county government shall be deposited in the comptroller's custody and he or she shall enter all such contracts upon the comptroller's books.~~

~~(g) The comptroller, before countersigning any warrant, shall inquire into and carefully investigate the transaction in relation to which any such warrants shall have been drawn; and to this end the comptroller may issue summons for and compel the attendance of witnesses, the production of books and papers pertinent to the transaction, administer oaths and affirmations, and ascertain the truth of the transaction so to be inquired into.~~

~~(h) All bills shall, before allowance by the county government, be audited and marked "correct" by the comptroller, and no bill shall be passed by the county government without such endorsement. In case the comptroller shall refuse to allow any item of expenditure, or to countersign any warrant, or to endorse any bill the comptroller shall forthwith transmit to the county government his or her reasons therefor in writing, which shall thereupon be duly considered, and if his or her action shall be overruled by a vote of a majority of the elected officials of the county governing body, the comptroller shall allow the expenditure and countersign the warrant, or endorse the bill in conformity with the judgment of such officials, in which case the comptroller shall be exonerated from any responsibility in the premises. The receivers of taxes and county treasurers, respectively, shall not disburse any money upon warrants drawn by order of the county government, except such warrants as have been duly signed by the President of the county government and countersigned by the county comptroller.~~

~~(i) The comptroller may adopt a facsimile of his or her signature, in lieu of his usual signature, and affix such facsimile to any check, draft, warrant, voucher or other instrument for the payment of money that the comptroller is required to sign. Notice of the adoption of any such facsimile signature shall be given in writing to the depository from which funds are to be withdrawn which notice shall include a description of such facsimile signature. Prior to use of such facsimile, the written approval of such depository must be obtained.~~

~~(j) Any depository, bank or other person which in good faith gives value for any check, draft, warrant, voucher or other instrument for the payment of money bearing a duly adopted facsimile signature as authorized hereby shall be fully protected in such giving of value notwithstanding that the facsimile signature shall have been affixed without the authority or knowledge of the person whose signature it should purport to be.~~

~~(k) No person shall fraudulently imitate or duplicate or attempt to fraudulently imitate or duplicate the facsimile signature of the county comptroller who is permitted in the performance of his or her duties to affix his or her signature to checks, drafts, warrants, vouchers or other instruments for the payment of money, nor shall any person cause any such genuine facsimile signatures to be printed or impressed to checks, drafts, warrants, vouchers or other instruments for the payment of money, without the authority of said person so authorized.~~

~~(l) No provision hereof shall release the liability of any public official, employee or other person for loss of funds occasioned by any unauthorized use or misuse of a duly adopted facsimile signature. All officials may protect themselves from loss, damage or expense occasioned by the unauthorized use of such facsimile signature by purchasing, at public expense, a surety bond or insurance in such amount as is approved by the county government.~~

~~(m) Any person violating subsection (k) of this section shall, upon conviction, be deemed guilty of a felony and shall be imprisoned for a term not to exceed 5 years, and/or fined not less than \$500 nor more than \$2,500, or both, in the discretion of the court.~~

~~§ 9306. Compensation.~~

~~(a) In Kent County the Comptroller of Kent County shall receive a salary in an amount to be set by ordinance of the Kent County Levy Court.~~

~~(b) The salary of the Comptroller shall be paid by warrants drawn upon the Receiver of Taxes and County Treasurer for the County.~~

~~§ 9307. Deputy Comptroller; employment; salary.~~

~~(a) The Comptroller of Sussex County may select and employ 1 deputy.~~

~~(b) The salary of the Deputy Comptroller of Sussex County shall be \$1,200 per year.~~

~~(c) The Comptroller of Kent County may employ such deputies as are authorized by the county government of Kent County at compensations fixed by such county government. In Kent County, minimum qualifications may be established by the county government for each position, and said minimum qualifications and compensation and any subsequent adjustments there shall have the concurrence of the comptroller.~~

~~§ 9308. Assistants and clerical help.~~

~~(a) The Comptroller of New Castle County may select and employ 2 assistant chief deputies, 1 machine operator, 1 junior accountant, 1 secretary (stenographic) and 1 chief clerk (general), in addition to the Chief Deputy Comptroller.~~

~~(b) Any county comptroller may select and employ such additional clerical assistance as the government of his or her county may approve.~~

~~§ 9309. Removal from office for neglect or malfeasance.~~

~~Any county comptroller appointed or elected under the provisions of this chapter may be removed from office by the Superior Court in the county, respectively, wherein the comptroller holds office, after trial and conviction upon charges of wilful neglect or malfeasance in office.~~

~~§ 9310. Comptroller of Sussex County; appointment as notary public.~~

~~(a) The Governor shall appoint the County Comptroller of Sussex County a special notary public, with power to perform the duties of a notary public in taking affidavits of county officers and acknowledgments of deeds and other papers by any official of the County. This work shall be done without charge.~~

~~(b) The commission of such County Comptroller, as notary public, shall expire on the date of the expiration of his or her commission as County Comptroller, or when the office of County Comptroller shall become vacant by resignation, removal or otherwise.~~

~~§ 9311. Power of comptroller with respect to warrants.~~

~~The comptroller shall countersign warrants of the county government, after having verified the calculation entering into the sum payable thereon. The comptroller may, however, return a warrant without countersigning same, stating the comptroller's objections thereto in writing, and thereupon the county government shall act again and may direct the comptroller's countersignature.~~

~~§ 9312. Construction.~~

~~In the construction of the provisions of this chapter, the powers and duties assigned to the Comptroller shall not be applicable to Sussex County and to such extent are repealed. This section shall take effect at the expiration of the term of the person presently holding the office of the Comptroller of Sussex County. Prior to the expiration of that term, the County Comptroller shall continue to hold office and perform, under the direction and control of the Department of Finance, the functions assigned to that Comptroller by law prior to the enactment of this statute.~~

Section 2. Amend § 4101, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4101. Definitions.

(a) As used in this part:

(1) "County" means Kent County.

(2) "County government" means the governing body of Kent County.

(b) Any reference in the Delaware Code or any other law of this State to the Receiver of Taxes and County Treasurer for Kent County or the County Comptroller for Kent County shall be construed to mean the Department of Finance of Kent County as created by § 4123 of this title.

Section 3. Amend § 4122, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4122. Investment powers.

The county government by its Levy Court may authorize and order the investment of idle funds kept as surplus ~~by the Receiver of Taxes~~ and not reasonably required to be maintained on a demand basis in such manner as

recommended by the ~~County Comptroller~~ Director of Finance. Investment of county funds shall be in accordance with general state law and the ordinances of the county government governing such investments. All interest or investments and moneys so earned from these idle or surplus funds shall accrue only to the benefit of the County of Kent.

Section 4. Amend § 4123, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4123. Department of Finance.

(a) *Department of Finance, general.* — There shall be a Department of Finance under the direction of the County Administrator which shall be responsible for the administration of the budgeting, accounting, purchasing, treasury, and other financial affairs of Kent County.

(b) *Director of Finance.* — The Director of Finance shall be the head of the Department of Finance. The Levy Court shall appoint the Director of Finance and fix the Director's compensation.

(c) Former functions, duties, and powers of the County Comptroller. — The Department of Finance, under the authority of the Director of Finance, shall perform all of the functions assigned to and possess all of the duties and powers previously held by the County Comptroller, including all of the following:

(1) Audit the accounts of the county government.

(2) Countersign all warrants drawn by order of the county government for the payment of money.

(3) During January and July of each year, audit, inspect, and examine the books, accounts, papers, records, and dockets of the clerk of the peace, sheriff, recorder, register of wills, and other county officers and confirm the amount paid to the County in fees.

(4) Annually examine the books of all public institutions within the County that are supported wholly or in part by the County and issue a written report to the county government containing the result of such examination.

(5) Keep a record of accounts, in which shall be entered all items of expenditure, all warrants drawn, to whom made payable, and for what particular work or other cause. All written contracts made by the county government shall be deposited in the Department's custody and the Department shall enter all such contracts upon its records.

(6) Before countersigning any warrant, inquire into and carefully investigate. To fulfill this duty, the Director of Finance may issue summons for the attendance of witnesses, compel the production of books and papers pertinent to the transaction, administer oaths and affirmations, and ascertain the truth of the transaction inquired into.

(7) Audit and mark "correct" all bills before allowance by the county government. No bill shall be passed by the county government without such an endorsement by the Department. If the Director refuses to allow any item of expenditure, to countersign any warrant, or to endorse any bill, the Director shall immediately transmit to the county government the Director's reasons for refusal in writing. The county government shall consider the Director's reasons for refusal and may, by a vote of the majority of the elected officials of the county government, overrule the Director's refusal. If the Director's refusal is overruled, the Director shall allow the expenditure and countersign the warrant, or endorse the bill in conformity with the judgment of the majority of the elected officials of the county government.

(8) Adopt and use a facsimile of the Director's signature as provided by Chapter 54 of Title 29.

Section 5. Amend § 5103, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5103. Light tax; administration of fund; surplus.

~~The Receiver of Taxes of Kent County~~ The Department of Finance shall receive all light taxes collected, shall keep them in a separate account, and shall pay them out only upon orders signed by the President of the county government and approved by the ~~Comptroller of the County~~ Director of Finance. They shall receive no additional compensation for the performance of any duty required of them or any of them under this section. If, after

payment of all contracts entered into pursuant to this chapter, there remains a surplus in the light account, the surplus shall be applied to reduce the light tax rate for the succeeding taxable year.

Section 6. Amend § 9101, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9101. Definitions.

As used in this chapter:

“County offices” or “county officers” means the elected or appointed public officers of the respective counties and includes county council members, Levy Court Commissioners, clerks of the peace, members of the boards of assessment, receivers of taxes and county treasurers, collectors of delinquent taxes, ~~county comptrollers~~, registers of wills, sheriffs, recorders, coroners and any other officer, board, commission, department or agency (other than a court or judge) whose jurisdiction is limited to a single county; provided, however, that the Prothonotaries of New Castle County, Kent County and Sussex County shall not be considered to be county offices.

Section 7. Amend § 9111, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9111. Audit of fees.

The ~~county comptroller or department of finance~~ Departments of Finance of New Castle County and of Sussex County shall, during the months of January and July in each year, audit, ~~inspect~~ inspect, and examine the books, accounts, papers, ~~records~~ records, and dockets of the several county officers and ascertain the amounts due to the county in fees. During those months, ~~he or she~~ the Departments of Finance of New Castle County and of Sussex County shall report in writing to ~~the county government~~ their respective county governments, which shall cause the same to be entered at large upon their minutes and published ~~in pamphlet form~~ for public distribution.

Section 8. Amend § 5705, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5705. Certificates of the results of the election; number required.

(b) The number of such certificates to be prepared by the Court for each office shall be as follows:

~~County Comptroller, 1;~~

Section 9. Amend § 5706, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5706. Form of certificates.

(a) The certificates of the Court of the results of the election in its county may be according to the following form:

“The State of Delaware,..... County, ss.

Be it Remembered, that at the general election held on the Tuesday next after the first Monday in November, in the year of our Lord Two Thousand and..... for..... County, according to the Constitution and laws of the State of Delaware (here insert, to wit: If the certificate be of an election of electors of President and Vice-President, of Governor and Lieutenant Governor, of Senator in the Senate of the United States, of Representative in Congress, of Attorney General, of Insurance Commissioner, of State Treasurer, of Auditor of Accounts, the number in words at length of votes given for each person voted for, for such respective offices; if the certificate be of an election of Senator or Representative in the General Assembly, or, of clerk of the peace, of register of wills, of recorder, of Levy Court Commissioner or Commissioners, of receiver of taxes and county treasurer, ~~of county comptroller~~, of sheriff, of county executive, of county council member, the names of the persons elected), which is manifest by calculating and ascertaining the aggregate amount of all votes given for each person voted for in all the election districts of the county, according to the provisions made by law in this behalf.

In testimony, whereof, we..... and..... constituting the Superior Court for..... County, who have met and ascertained the state of the election throughout the said County, as the law requires, have hereunto set our hands and caused the seal of the said Superior Court to be hereunto affixed at the Court House in said County, on this..... day of November, A. D.....”

(b) The manner of making the insertion may be as follows:

~~In case of County Comptroller~~

~~..... was duly elected County Comptroller for County.~~

Section 10. Amend § 5708, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5708. Tie vote; certificate.

If, by reason of an equal number of votes having been cast for 2 or more persons for the office of Senator or Representative in the General Assembly, clerk of the peace, register of wills, recorder, levy court commissioner, receiver of taxes and county treasurer, ~~county comptroller or~~ sheriff, county executive or county council member, it appears to the Court that a vacancy will occur in the office, a certificate of such fact shall thereupon be made under the hands of the Court, and under its seal, which certificate shall be transmitted by the Court to the Governor, and such certificate shall be delivered as provided in § 5709 of this title.

Section 11. Amend § 5709, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5709. Disposition of certificates by the Court.

(a) The Court shall, within 3 days after making the certificates of the result of the election for electors of President and Vice-President, either personally or by a person deputed by it for that purpose:

(10) Deliver the certificate of election of the receiver of taxes and county treasurer, ~~and of comptroller,~~ to the clerk of the peace of the county; and

Section 12. This Act takes effect on the date on which the term of the present Kent County Comptroller expires or on the occasion of such individual's death, resignation, or removal from office for cause, whichever occurs first. Prior to the expiration of the term of the present Kent County Comptroller, that individual may continue to hold office.

Approved April 01, 2016