

ADDENDUM

MARTINSVILLE CITY COUNCIL AGENDA

December 12, 2017

7:30 pm – REGULAR SESSION ADDENDUM

1. Hear information regarding temporary appointment to the position of Commonwealth's Attorney and a special election.
2. Consider setting a public hearing for Council's January 9, 2018 meeting for the purpose of receiving names of citizens interested in an appointment to one unexpired term on the Martinsville City School Board, ending June 30, 2018.

Date: December 12, 2017

Item No: Addendum 1

Department: City Attorney

Issue: Hear information regarding temporary appointment to the position of Commonwealth's Attorney and a special election.

Summary: Incumbent Commonwealth's Attorney Clay Gravely has resigned due to reasons of health. Code of Virginia § 24.2-228.1(F) states that his Deputy Andy Hall must be appointed the new Commonwealth Attorney through the end of 2018, and subsection (D) states that the special election to fill the remainder of the term through the end of 2021 be held at the general election must be held November 6, 2018.

Attachments: Petitions to be filed with Circuit Court, Code of Virginia § 24.2-228.1

Recommendations: Direct City Attorney to file petitions, by motion & voice vote.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF MARTINSVILLE

IN RE

**APPOINTMENT OF
COMMONWEALTH’S ATTORNEY**

)
)
)
)

Case Number _____

PETITION FOR APPOINTMENT OF COMMONWEALTH’S ATTORNEY

Comes now the City of Martinsville, by its City Attorney and pursuant to Code of Virginia § 24.2-228.1 and requests that an appointment be ordered to fill a vacancy in the constitutional office of Commonwealth’s Attorney. In support thereof, the City states the following:

1. The incumbent Commonwealth’s Attorney is Harry Clay Gravely IV, whose current term of office expires on December 31, 2017. At the General Election held November 7, 2017, Mr. Gravely was re-elected, to a term expiring December 31, 2021.
2. Mr. Gravely’s Deputy is Glen Andrew “Andy” Hall; his appointment is attached hereto as Exhibit A.
3. Mr. Gravely resigned from office on Sunday, December 10, 2017.
4. At its meeting conducted Tuesday, December 12, 2017, the City Council of Martinsville authorized the filing of this Petition.
5. According to the most recent United States’ Census of 2010, the population of the City of Martinsville is 13,821.
6. Code of Virginia § 24.2-228.1 governs vacancies in elected constitutional officers, “whether occurring when for any reason an officer-elect does not take office or occurring after an officer begins his term.” Subsection F states that the Deputy discharges the duties of the office until such time as the office is filled by special election. Because Martinsville is a city of less than 15,000 population, Subsection D governs the timing of its special election.
7. The relevant portions of Code of Virginia § 24.2-228.1(D) reads as follows:
 . . . a vacancy in any elected constitutional office in any . . . city with a population of 15,000 or less . . . shall be filled by a special election ordered by the court to be held at the next ensuing general election to be held in November.
8. Subsection D specifically excludes the provision of Subsection A, which references Subsection B. Neither Subsections C nor E applies to the instant situation.

Wherefore, the City requests an order directing that Glen Andrew Hall be appointed Commonwealth's Attorney, to exercise the powers and discharge the duties of the office of Commonwealth's Attorney for the City of Martinsville until December 31, 2018.

Respectfully submitted,

By _____
City Attorney

Eric Helms Monday, VSB #38839
55 West Church Street /Post Office Box 1112
Martinsville, Virginia 24114
Telephone: (276) 403-5196 / Telefax: (276) 403-5194
Email: emonday@ci.martinsville.va.us

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF MARTINSVILLE

IN RE)
)
APPOINTMENT OF) **Case Number** _____
COMMONWEALTH’S ATTORNEY)

**FINAL ORDER:
APPOINTMENT OF COMMONWEALTH’S ATTORNEY**

Came this day the City of Martinsville, by its City Attorney and pursuant to Code of Virginia § 24.2-228.1 and requested an appointment to fill a vacancy in the constitutional office of Commonwealth’s Attorney.

The incumbent Commonwealth’s Attorney, Harry Clay Gravely IV resigned from office on Sunday, December 10, 2017. His deputy is Glen Andrew Hall.

Good cause having been shown to appoint a Commonwealth’s Attorney, it is SO ORDERED:

Glen Andrew Hall is appointed Commonwealth’s Attorney for the City of Martinsville and is vested with all the powers, and shall perform all of the duties of the office, and shall be entitled to all the privileges and protections afforded by law to elected or appointed constitutional officers generally, and to the office of Commonwealth’s Attorney for the City of Martinsville specifically. Such appointment shall remain in force until midnight, December 31, 2018.

The Clerk is directed to post a certified copy of this Order, to transmit a certified copy of this Order both to Mr. Hall and to Counsel for Petitioner, and to strike this matter from the docket.

ENTERED this 12th day of December, 2017.

Circuit Court Judge

I ask for this:

Eric Helms Monday, VSB #38839
City Attorney of Martinsville
55 West Church Street /Post Office Box 1112
Martinsville, Virginia 24114
Telephone: (276) 403-5196 / Telefax: (276) 403-5194
Email: emonday@ci.martinsville.va.us

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF MARTINSVILLE

IN RE

WRIT OF SPECIAL ELECTION

)

)

)

Case Number _____

PETITION FOR WRIT OF SPECIAL ELECTION

Comes now the City of Martinsville, by its City Attorney and pursuant to Code of Virginia § 24.2-228.1 and requests a Writ of Special Election issue, to fill a vacancy in the constitutional office of Commonwealth’s Attorney. In support thereof, the City states the following:

1. The incumbent Commonwealth’s Attorney is Harry Clay Gravely IV, whose current term of office expires on December 31, 2017; the general election to fill the term from January 1, 2018 to December 31, 2022 is currently scheduled for November 7, 2017.
2. Mr. Gravely’s Deputy is Glen Andrew “Andy” Hall.
3. Mr. Gravely resigned from office on Sunday, December 10, 2017.
4. At its meeting conducted Tuesday, December 12, 2017, the City Council of Martinsville authorized the filing of this Petition.
5. According to the most recent United States’ Census of 2010, the population of the City of Martinsville is 13,821.
6. Code of Virginia § 24.2-228.1 governs vacancies in elected constitutional officers, “whether occurring when for any reason an officer-elect does not take office or occurring after an officer begins his term.” Subsection F states that the Deputy discharges the duties of the office until such time as the office is filled by special election. Because Martinsville is a city of less than 15,000 population, Subsection D governs the timing of its special election.
7. The relevant portions of Code of Virginia § 24.2-228.1(D) reads as follows:
 . . . a vacancy in any elected constitutional office in any . . . city with a population of 15,000 or less . . . shall be filled by a special election ordered by the court to be held at the next ensuing general election to be held in November.
8. Subsection D specifically excludes the provision of Subsection A, which references Subsection B. Neither Subsections C nor E applies to the instant situation.

Wherefore, the City requests that a Writ of Special Election be issued, directing such to be held Tuesday, November 6, 2018, to fill the remainder of the term of the Commonwealth's Attorney for the City of Martinsville, expiring December 31, 2021.

Respectfully submitted,

By _____
City Attorney

Eric Helms Monday, VSB #38839
55 West Church Street /Post Office Box 1112
Martinsville, Virginia 24114
Telephone: (276) 403-5196 / Telefax: (276) 403-5194
Email: emonday@ci.martinsville.va.us

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF MARTINSVILLE

IN RE

WRIT OF SPECIAL ELECTION

)
)
)

Case Number _____

**FINAL ORDER:
WRIT OF SPECIAL ELECTION**

Came this day the City of Martinsville, by its City Attorney and pursuant to Code of Virginia § 24.2-228.1 and requested that a Writ of Special Election be issued for the constitutional office of Commonwealth's Attorney.

The incumbent Commonwealth's Attorney, Harry Clay Gravely IV resigned from office on Sunday, December 10, 2017. His deputy is Glen Andrew Hall.

Good cause having been shown to issue a Writ of Special Election issue, it is SO ORDERED:

A writ of Special Election is hereby issued for the office Commonwealths' Attorney for the City of Martinsville, at the general election to be held Tuesday, November 6, 2018, to fill the remainder of the term for the office of Commonwealth's Attorney, expiring December 31, 2021. The Electoral Board and Registrar are hereby directed and empowered to undertake all necessary measures for the proper execution of this Writ, in the manner and at the places as would be executed for a general election.

This Court FURTHER ORDERS the Electoral Board and Registrar to observe the directives set forth in § 24.2-681 *et seq.* of the Code of Virginia when conducting this special election.

This Court FURTHER ORDERS that the Secretary of the Electoral Board shall post a copy of this Writ on the official website for the City and have notice of the election published once in a newspaper of general circulation in this jurisdiction at least 10 days before the special election.

The Clerk is directed to post a certified copy of this Order, to transmit a certified copy of this Writ to the General Registrar of the City, to the Secretary of the Electoral Board and to Counsel for Petitioner, and to strike this matter from the docket.

ENTERED this 12th day of December, 2017.

Circuit Court Judge

I ask for this:

Eric Helms Monday, VSB #38839
City Attorney of Martinsville
55 West Church Street /Post Office Box 1112
Martinsville, Virginia 24114
Telephone: (276) 403-5196 / Telefax: (276) 403-5194
Email: emonday@ci.martinsville.va.us

§ 24.2-228.1. Election to fill vacancy in constitutional office

A. Notwithstanding any provision of a charter to the contrary, a vacancy in any elected constitutional office, whether occurring when for any reason an officer-elect does not take office or occurring after an officer begins his term, shall be filled by special election, except as provided in subsection B. Within 15 days of the occurrence of the vacancy, the governing body of the county or city in which the vacancy occurs shall petition the circuit court to issue a writ of election to fill the vacancy as set forth in Article 5 (§ 24.2-681 et seq.) of Chapter 6. Either upon receipt of the petition or on its own motion, the court shall promptly issue the writ ordering the election for a date determined pursuant to § 24.2-682. However, the governing body may request in its petition that the special election be held on the date of the next general election in November, and the court may order the special election to be held on that date.

B. If a vacancy in any elected constitutional office occurs within the 12 months immediately preceding the end of the term of that office, the governing body may petition the circuit court to request that no special election be ordered. Upon receipt of such petition, the court shall grant such request. The highest ranking deputy officer, or in the case of the office of attorney for the Commonwealth, the highest ranking full-time assistant attorney for the Commonwealth, who is qualified to vote for and hold that office, shall be vested with the powers and shall perform all of the duties of the office, and shall be entitled to all the privileges and protections afforded by law to elected or appointed constitutional officers, for the remainder of the unexpired term.

C. Upon receipt of written notification by an officer or officer-elect of his resignation as of a stated date, the governing body may immediately petition the circuit court to issue a writ of election, and the court may immediately issue the writ to call the election. The officer's or officer-elect's resignation shall not be revocable after the date stated by him for his resignation or after the thirtieth day before the date set for the special election.

D. Notwithstanding the provisions of subsection A, a vacancy in any elected constitutional office in any county or city with a population of 15,000 or less, or shared by two or more units of government with a combined population of 15,000 or less, shall be filled by a special election ordered by the court to be held at the next ensuing general election to be held in November. If the vacancy occurs within 90 days prior to that election, however, the writ shall order the election to be held at the second ensuing such general election.

E. Notwithstanding any provision of law to the contrary, no election to fill a vacancy shall be ordered or held if the general election at which it is to be called is scheduled within 60 days of the end of the term of the office to be filled.

F. Notwithstanding any provision of a charter to the contrary, the highest ranking deputy officer, or in the case of the office of attorney for the Commonwealth, the highest ranking full-time assistant attorney for the Commonwealth, if there is such a deputy or assistant in the office, who is qualified to vote for and hold that office, shall be vested with the powers and shall perform all of the duties of the office, and shall be entitled to all the privileges and protections afforded by law to elected or appointed constitutional officers, until the qualified voters fill the vacancy by election and the person so elected has qualified and taken the oath of office. In the event that (i)

there is no deputy officer or full-time assistant attorney for the Commonwealth in the office or (ii) the highest-ranking deputy officer or assistant attorney for the Commonwealth declines to serve, the court shall make an interim appointment to fill the vacancy pursuant to § 24.2-227 until the qualified voters fill the vacancy by election and the person so elected has qualified and taken the oath of office.

G. The absence from the county or city of a constitutional officer by reason of his service in the Armed Forces of the United States shall not be deemed to create a vacancy in the office without a written notification by the officer of his resignation from the office. Notwithstanding any other provision of law, including § 19.2-156, the power to relieve a constitutional officer of the duties or powers of his office or position during the period of such absence shall remain the sole prerogative of the constitutional officer unless expressly waived by him in writing.

2000, cc. 787, 1070;2003, c. 1015;2006, cc. 120, 253;2009, c. 157;2011, c. 599;2015, c. 648;2016, cc. 453, 511.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Meeting Date: December 12, 2017

Item No: Addendum 2

Department: City Manager

Issue: Consider setting a public hearing for Council's January 9, 2018 meeting for the purpose of receiving names of citizens interested in an appointment to one unexpired term on the Martinsville City School Board, ending June 30, 2018.

Summary:

Incumbent Commonwealth's Attorney Clay Gravely has resigned due to reasons of health. Code of Virginia § 24.2-228.1(F) states that his Deputy Andy Hall must be appointed the new Commonwealth Attorney.

Code of Virginia § 22.1-30 precludes a constitutional officer from serving on the school board, so Mr. Hall must resign as a school board member.

Only those citizens whose names are brought up during the Public Hearing can be considered for appointment, and appointments cannot be made until seven days after the Public Hearing. Citizens may appear in person, stating their name, address, and interest in the position; or their name, address, and interest may be offered by another individual. Council typically conducts interviews with candidates after this meeting.

Attachments: Martinsville School Board current listing.
Code of Virginia § 22.1-30

Recommendations: Set the Public Hearing for Council's January 9, 2018 meeting.

SCHOOL BOARD

SCHOOL BOARD – The School Board is declared a body corporate. In its corporate capacity, it is vested with all the powers and charged with all the duties, obligations, and responsibilities upon school boards by law. It may sue, be sued, contract, be contracted with, and in accordance with the provisions of this title, purchase, take, hold, lease, and convey school property both real and personal. The School Board has the following powers and duties: 1) to make rules for the governance of the schools within its jurisdiction; 2) to determine the curriculum, methods of teaching, methods of administration and governance, and the length of the school term; 3) to employ and dismiss teachers upon the recommendation of the superintendent; 4) to suspend or expel pupils when necessary; 5) to establish such schools as are necessary in the judgement of the Board to so constitute a complete and efficient system; 6) to control and manage funds made available to the Board for the purpose of conducting free public schools; 7) examine all claims for payment and authorize payment; and 8) to submit annually to City Council a budget request.

TERMS: The Board consists of five members serving **three-year** terms appointed by City Council. **School Board members can serve a maximum of three 3-year consecutive terms.**

Meetings are held on the second Monday of each month.

CONTACT: Mr. Zeb Talley, Superintendent, 403-5820, 746 Indian Trail, Martinsville, VA 24112

| Name & Address | Initial Appointment | Term Expires | Full Term |
|---|---------------------|--------------|-----------|
| Eric Hruza, 707 Mulberry Rd | 6/30/16 | 6/30/19 | 1 |
| Donna Dillard, 912 Forest Lake Dr. (reappt 6/27/17) | 8/24/16 | 6/30/20 | 0 |
| Tonya Jones, 752 Stultz Road | 6/27/17 | 6/30/20 | 0 |
| Andy Hall, 1506 Whittle Road | 9/26/17 | 6/30/18 | 0 |
| Joan Montgomery, 807 Corn Tassel Tr. | 6/16/15 | 6/30/18 | 1 |

NOTE: If a Board or Commission does not specify number of terms a person can serve, then the number of terms defaults to three terms per a policy adopted by City Council December 11, 1990. (per city attorney 4/26/11) Two exceptions (1) if no one is interested (2) no one qualified has applied, then the person holding the position can serve another term if Council chooses.

§ 22.1-30. Certain officers may not act on school board or serve as tie breaker

A. No state, county, city or town officer, no deputy of any such officer, no member of the governing body of a county, city or town, no employee of a school board, and no father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law or brother-in-law of a member of the county governing body may, during his term of office, be appointed as a member of the school board for such county, city or town or as tie breaker for such school board except:

1. Local directors of social services;
2. Commissioners in chancery;
3. Commissioners of accounts;
4. Registrars of vital records and health statistics;
5. Notaries public;
6. Clerks and employees of the federal government in the District of Columbia;
7. Medical examiners;
8. Officers and employees of the District of Columbia;
9. In Northumberland County, oyster inspectors;
10. In Lunenburg County, members of the county library board and members of the local board of social services;
11. Auxiliary deputy sheriffs and auxiliary police officers receiving less than five dollars in annual compensation;
12. Members of the town councils serving towns within Craig, Giles and Wise Counties; and
13. Public defenders.

B. Nothing in this section shall be construed to prohibit the election of deputies of constitutional officers to school board membership, consistent with federal law and regulation.

Code 1950, §§ 22-69, 22-92; 1973, c. 63; 1980, c. 559; 1986, c. 260; 1990, c. 111; 1991, cc. 140, 163; 1993, c. 352; 1994, c. 723; 1995, c. 290; 2002, c. 747.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.