

NORTH CAROLINA GENERAL ASSEMBLY
1969 SESSION

CHAPTER 819
HOUSE BILL 1040

AN ACT TO INCORPORATE THE TOWN OF POLKVILLE IN CLEVELAND
COUNTY SUBJECT TO AN ELECTION.

The General Assembly of North Carolina do enact:

Section 1. (a) The Board of Elections of Cleveland County shall conduct a special election on Tuesday, July 22, 1969, for the purpose of submitting to the qualified voters of the area hereinafter described as the proposed corporate limits of the Town of Polkville the question whether or not such area shall be incorporated as a municipal corporation known as the Town of Polkville, and to elect the members of the governing body if said area is incorporated. On such day, the polls shall be open from 6:30 a.m. until 6:30 p.m. The Board of Elections for Cleveland County in conducting the election required to be held herein shall follow the procedure as outlined in this Act and the General Statutes of North Carolina relating to municipal elections where not in conflict with this Act.

(b) A new registration of all qualified voters in the described area shall be conducted for the purpose of registering the names of those who desire to vote in such special election. The registration book for such new registration shall be open from Monday, June 30, 1969, through Friday, July 18, 1969, excluding Sundays and Friday, July 4, 1969, and shall remain open on each day from 9:00 a.m. until 5:00 p.m. On the Saturdays of July 5 and July 12, the books shall be kept at the polling place. On other days during the registration period, it may be kept at the home or place of business of the registrar, or at the polling place, as designated in the notice hereinafter required. Saturday, July 19, 1969, shall be Challenge Day.

(c) The Board of Elections of Cleveland County shall, not later than Monday, June 17, 1969, appoint a registrar and two judges of election and designate a polling place for the special election.

(d) Not later than Friday, June 20, 1969, the Board of Elections of Cleveland County shall cause to be posted at the Polkville Post Office, at the Polkville Fire Station, and at such other public places as the Board may choose, a notice stating the time, the polling place, and the purpose of the special election; the names of the registrar and judges of election; the dates, hours, and place or places of registration; the date, time, and place for challenges; that the registration is a complete new registration for the special election; and that candidates for election to the Town Board of Commissioners must file with the Board notice of candidacy not earlier than Monday, June 23, 1969, and not later than 5:00 p.m. on Friday, July 11, 1969. The Board of

Elections may, in its discretion, also cause such notice to be published one or more times in a newspaper having general circulation in the Polkville community.

(e) Any qualified voter who would offer himself as a candidate for Commissioner in such election shall file with the Chairman or Clerk of the Board of Elections of Cleveland County a written statement giving notice of his candidacy. Such notice shall be filed not earlier than Monday, June 23, 1969, and not later than 5:00 p.m. on Friday, July 11, 1969, and shall be substantially in the following form: "I, _____, do hereby give notice that I am a candidate for election to the office of Commissioner, Town of Polkville, to be voted on at the election to be held on Tuesday, July 22, 1969, and I hereby request that my name be placed on the official ballot for such office. I certify that I am a resident and qualified voter of the Town of Polkville, residing at _____.
_____(Date)_____. _____(Signature)_____.
Witness: _____."

(f) In the special election, those voters who favor the incorporation of the Town of Polkville as provided in this Act shall vote a ballot upon which shall be printed the words: "FOR Incorporation of Town of Polkville", and those voters who are opposed to the incorporation of the Town of Polkville as provided in this Act shall vote a ballot upon which shall be printed the words "AGAINST Incorporation of Town of Polkville".

(g) Also in the special election, each qualified registered voter shall be entitled to vote for five (5) candidates for Commissioner upon a ballot on which shall be listed, in alphabetical order, the names of all persons who filed notice of candidacy with the Board of Elections during the period hereinabove established.

Sec. 2. If a majority of the votes cast in such special election shall be cast "AGAINST Incorporation of Town of Polkville", then Sections 4 through 13 of this Act shall have no force and effect.

Sec. 3. If a majority of the votes cast in such special election shall be cast "FOR Incorporation of Town of Polkville", then Sections 10 through 13 of this Act shall be in full force and effect from and after July 22, 1969.

Sec. 4. (a) In the special election, the three (3) candidates for Commissioner who receive the largest numbers of votes cast for Commissioner shall be declared elected for terms of four (4) years or until their successors are elected and qualified, and the two (2) candidates for Commissioner who receive the next largest numbers of votes cast for Commissioner shall be declared elected for terms of two (2) years or until their successors are elected and qualified. In case of a tie between opposing candidates, the Board of Elections shall determine the result by lot.

(b) The Chairman of the Board of Elections shall notify the persons elected as Commissioners, and shall designate some qualified officer to administer to them the oath of office, which shall be done as soon as practicable following their election.

Sec. 5. The following provisions of law shall constitute the Charter of the Town of Polkville in Cleveland County:

"THE CHARTER OF THE TOWN OF POLKVILLE

"ARTICLE I. INCORPORATION AND CORPORATE POWERS

"Section 1.1. Incorporation and General Powers. The inhabitants of the area described in Section 2.1 of this Charter shall be and constitute a body politic and corporate under the name of the 'Town of Polkville', and shall be vested with all property which may be acquired by the Town, and all rights herein delegated to it; shall have perpetual succession; may have a common seal and alter and renew the same at pleasure; may sue and be sued; may contract; may acquire and hold all such property, real and personal, as may be devised, bequeathed, sold or in any manner conveyed or dedicated to it, or otherwise acquired by it, and may from time to time hold or invest, sell, or dispose of the same; and shall have and may exercise in conformity with this Charter all municipal powers, functions, rights, privileges, and immunities of every name and nature.

"Section 1.2. Exercise of Powers. All powers, functions, rights, privileges, and immunities of the Town, its officers, agencies, or employees, shall be carried into execution as provided by this Charter, or, if this Charter makes no provision, as provided by ordinance or resolution of the Board of Commissioners and as provided by the general laws of North Carolina pertaining to municipal corporations.

"Section 1.3. Enumerated Powers Not Exclusive. The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein or implied hereby, or those appropriate to the exercise of such powers, the Town of Polkville shall have and may exercise all powers which are granted to municipal corporations by the general laws of North Carolina and all powers which, under the Constitution of North Carolina, it would be competent for this Charter specifically to enumerate.

"ARTICLE II. CORPORATE BOUNDARIES

"Section 2.1. Corporate Boundaries. (a) For the purposes of conducting the special election on the question of incorporation and for the election of Town Commissioners and for all other purposes, the corporate boundaries of the Town of Polkville shall be as follows until changed in accordance with law: All of the area lying and being within a circle with a radius of one (1) mile, with the center of said circle being at a point in the center of North Carolina Highway #226 where it intersects with the center of North Carolina Highway #182.

"(b) As soon as practicable following their election, the Board of Commissioners of the Town of Polkville shall cause to be made an accurate survey of the corporate boundaries and shall cause to be made an accurate map based upon such survey. After such survey and map is completed, and after the Board of Commissioners of the Town of Polkville finds and declares upon its minutes that the boundaries shown on such map do not vary from the description in subsection (a) of this Section, they shall cause accurate copies of such map to be filed in the office of the register of deeds of Cleveland County and in the office of the Secretary of State of North Carolina. From and after the time a copy of such map is filed in the office of the register of deeds of Cleveland County, the corporate boundaries as shown thereon shall be the corporate boundaries of the Town of Polkville until changed in accordance with law. An accurate copy of such map shall also be maintained in the Town offices.

"ARTICLE III. MAYOR AND BOARD OF COMMISSIONERS

"Section 3.1. Mayor and Mayor Pro Tempore. The Board of Commissioners shall choose one of its number to be the Mayor of the Town of Polkville. The Mayor shall be the official head of the Town government and shall preside at all meetings of the Board of Commissioners. When there is an equal division upon any question, or in the appointment of officers, by the Board, the Mayor shall determine the matter by his vote, and shall vote in no other case. The Mayor shall exercise such powers and perform such duties as are or may be conferred upon him by the general laws of North Carolina, by this Charter, and by the ordinances of the Town. The Board of Commissioners shall also choose one of its number to act as Mayor Pro Tempore, and he shall perform the duties of the Mayor in the Mayor's absence or disability. The Mayor and Mayor Pro Tempore as such shall have no fixed term of office, but shall serve in such capacity at the pleasure of the Board of Commissioners.

"Section 3.2. Composition of Board of Commissioners. The Board of Commissioners shall consist of five (5) members to be elected by and from the qualified voters of the Town voting at large in the manner provided by Article IV.

"Section 3.3. Terms; Qualifications; Vacancies. (a) Except for the initial terms of office hereinbefore specified, the Mayor and the members of the Board of Commissioners shall serve for terms of four (4) years, beginning the day and hour of the organizational meeting following their election, as established by ordinance in accordance with this Charter; provided, they shall serve until their successors are elected and qualify.

"(b) No person shall be eligible to be a candidate or be elected as a member of the Board of Commissioners, or to serve in such capacity, unless he is a resident and a qualified voter of the Town.

"(c) If any elected Commissioner shall refuse to qualify, or if there shall be any vacancy in the office of Commissioner after election and qualification, the remaining members of the Board shall by majority vote appoint some qualified person to serve for the unexpired term. Any Commissioner so appointed shall have the same authority and powers as if regularly elected.

"Section 3.4. Compensation of Mayor and Commissioners. The Mayor and other members of the Board of Commissioners shall receive for their services such salary as the Board of Commissioners shall determine. After the initial salaries have been established, such salaries may be increased or decreased as the Board of Commissioners sees fit, but no increase or decrease shall be made to take effect during the respective term of office which he is serving at the time the increase or decrease is voted.

"Section 3.5. Organization of Board; Oaths of Office. The Board of Commissioners shall meet and organize for the transaction of business at a time established by ordinance, following each biennial election and prior to July 1. Before entering upon their offices, each Commissioner shall take, subscribe, and have entered upon the minutes of the Board the following oath of office: 'I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of North Carolina not inconsistent therewith and that I will

faithfully perform the duties of the office of Commissioner, on which I am about to enter, according to my best skill and ability; so help me, God.'

"Section 3.6. Meetings of Board. (a) The Board of Commissioners shall fix suitable times for its regular meetings, which shall be as often as once monthly. Special meetings may be held on the call of the Mayor or a majority of the Commissioners, and those not joining in the call shall be notified in writing. Any business may be transacted at a special meeting that might be transacted at a regular meeting.

"(b) All meetings of the Board of Commissioners shall be open to the public. The Board shall not by executive session or otherwise formally consider or vote upon any question in private session.

"Section 3.7. Quorum; Votes. (a) A majority of the members elected to the Board of Commissioners shall constitute a quorum for the conduct of business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner as may be prescribed by ordinance.

"(b) The affirmative vote of a majority of the members of the Board of Commissioners shall be necessary to adopt any ordinance, or any resolution or motion having the effect of an ordinance. All other matters to be voted upon shall be decided by a majority vote of the members present and voting.

"Section 3.8. Ordinances and Resolutions. The adoption, amendment, repeal, pleading, or proving of ordinances shall be in accordance with the applicable provisions of the general laws of North Carolina not inconsistent with this Charter. The ayes and noes shall be taken upon all ordinances and resolutions and entered upon the minutes of the Board. The enacting clause of all ordinances shall be: 'Be it ordained by the Board of Commissioners of the Town of Polkville.' All ordinances and resolutions shall take effect upon adoption unless otherwise provided therein, or unless some provision of the General Statutes provides otherwise.

"ARTICLE IV. ELECTION PROCEDURE

"Section 4.1. Regular Municipal Elections. Following the initial election hereinbefore provided for, regular municipal elections shall be held on the Tuesday after the first Monday in May of each odd-numbered year, beginning in 1971. In the regular 1971 election and quadrennially thereafter, there shall be elected by the qualified voters of the Town voting at large two (2) Commissioners to serve for a term of four (4) years, or until their successors are elected and qualify. In the regular 1973 election and quadrennially thereafter, there shall be elected by the qualified voters of the Town voting at large three (3) Commissioners to serve for terms of four (4) years, or until their successors are elected and qualify.

"Section 4.2. Voting. In the regular 1971 election and quadrennially thereafter, each voter shall be entitled to vote for two (2) candidates for Commissioner, and the two (2) candidates for Commissioner who receive the largest numbers of votes cast for Commissioner shall be declared elected. In the 1973 election and quadrennially thereafter, each voter shall be entitled to vote for three (3) candidates for Commissioner, and the three (3) candidates who receive the largest numbers of votes cast for Commissioner shall be declared elected. In case of a tie between opposing candidates, the election officials shall determine the result by lot.

"Section 4.3. Marking of Ballots. In all regular municipal elections, each voter shall cast his vote for as many candidates as there are offices to be filled, and where an elector marks a ballot for any number of candidates less than the number of offices to be filled, such ballot shall not be counted for any of the candidates. There shall be printed on all ballots for Commissioner the number of candidates to be voted for.

"Section 4.4. Filing of Candidates. Each qualified person who would offer himself as a candidate for the office of Commissioner shall file with the Town Clerk a statement giving notice of his candidacy. Such notice shall be filed not earlier than the eighth Friday nor later than five o'clock p.m. on the third Friday prior to the election at which he offers his candidacy, shall be accompanied by payment of a filing fee of five dollars (\$5.00), and shall be substantially in the following form: 'I, _____, do hereby give notice that I am a candidate for election to the office of Commissioner, Town of Polkville, to be voted on at the election to be held on _____, and I hereby request that my name be placed on the official ballot for such office. I certify that I am a resident and qualified voter of the Town of Polkville, residing at _____.

_____(Date)_____.

_____(Signature)_____

_____(Witness)_____.

"Section 4.5. Regulation of Elections. All municipal elections shall be conducted in accordance with the provisions of the General Statutes of North Carolina, except as otherwise herein provided.

"ARTICLE V. TOWN ATTORNEY

"Section 5.1. Appointment; Qualifications; Term; Compensation. The Board of Commissioners shall appoint a Town Attorney who shall be an attorney at law licensed to engage in the practice of law in North Carolina and who need not be a resident of the Town during his tenure. The Town Attorney shall serve at the pleasure of the Board of Commissioners and shall receive such compensation as the Board shall determine.

"Section 5.2. Duties of Town Attorney. It shall be the duty of the Town Attorney to prosecute and defend suits for and against the Town; to advise the Mayor, Board of Commissioners, and other Town officials with respect to the affairs of the Town; to draw all legal documents relating to the affairs of the Town; to draw proposed ordinances when requested to do so; to inspect and pass upon all agreements, contracts, franchises and other instruments with which the Town may be concerned; to attend all meetings of the Board of Commissioners; and to perform such other duties as may be required of him by virtue of his position as Town Attorney.

"ARTICLE VI. ADMINISTRATIVE OFFICERS AND EMPLOYEES

"Section 6.1. Town Clerk. The Board of Commissioners shall appoint a Town Clerk to keep a journal of the proceedings of the Board and to maintain in a safe place all records and documents pertaining to the affairs of the Town, and to perform such other duties as may be required by law or as the Board may direct.

"Section 6.2. Town Tax Collector. The Board of Commissioners may appoint a Tax Collector to collect all taxes, licenses, fees and other moneys belonging to the Town, subject to the provisions of this Charter and the ordinances of the Town, and he shall

diligently comply with and enforce all the general laws of North Carolina relating to the collection, sale, and foreclosure of taxes by municipalities.

"Section 6.3. Town Accountant. The Board of Commissioners may appoint a Town Accountant to perform the duties of the Accountant as required by the Municipal Fiscal Control Act.

"Section 6.4. Consolidation of Functions. The Board of Commissioners may, in its discretion, consolidate the functions of any two or more of the positions of Town Clerk, Town Tax Collector, and Town Accountant, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions. The Board may also, in its discretion, designate a single employee to perform all or any part of the functions of any of the named positions, in lieu of appointing several persons to perform the same.

"Section 6.5. Other Employees. The Board of Commissioners may create and fill by appointment such other positions as it deems advisable to insure the efficient administration of the affairs of the Town, and may, in its discretion, appoint a person to supervise all Town departments, and may delegate to such person the power of appointment and removal of department heads and employees, other than the Town Attorney.

"ARTICLE VII. FINANCE

"Section 7.1. Custody of Town Money. All moneys received by the Town for or in connection with the business of the Town government shall be paid promptly into the Town depository. Such institution shall be designated by the Board of Commissioners in accordance with such regulations and subject to such requirements as to security for deposits and interest thereon as may be established by the General Statutes of North Carolina. All interest on moneys belonging to the Town shall accrue to the benefit of the Town. All moneys belonging to the Town shall be disbursed only in accordance with the provisions of the Municipal Fiscal Control Act.

"Section 7.2. Issuance of Bonds. The Town may issue bonds for the purposes and in the manner prescribed by the General Statutes of North Carolina relating to the issuance of bonds by municipalities.

"Section 7.3. Purchases and Contracts. Purchases of apparatus, supplies, materials, and equipment, and contracts for construction or repair work, shall be made in accordance with the General Statutes of North Carolina relating thereto.

"Section 7.4. Independent Audit. As soon as practicable after the close of each fiscal year, an independent audit shall be made of all books and accounts of the Town government by a certified public accountant or a qualified public accountant registered under Chapter 93 of the General Statutes of North Carolina, who shall have no personal interest directly or indirectly in the affairs of the Town or of any of its officers. The Board of Commissioners shall select the public accountant, and the results of such audit shall be made available for inspection by any interested citizen of the Town, and may be published if so ordered by the Board of Commissioners.

"Section 7.5. Taxation. The territory within the corporate limits, and its citizens and property, shall be subject to municipal taxes levied by the Town for the fiscal year 1969-70 and subsequent years. The Town may obtain from Cleveland County, and the

County Tax Supervisor shall provide upon request, a record of property within the corporate limits which was listed for taxation as of January 1, 1969.

"ARTICLE VIII. CLAIMS AGAINST THE TOWN

"Section 8.1. Title to Properties Used for Certain Purposes. In the absence of any contracts with the Town in relation to the lands used or occupied by it for the purposes of streets, sidewalks, alleys, or other public works of the Town signed by the owner thereof or his agent, it shall be conclusively presumed that said land has been granted to the Town by the owner or owners, and the Town shall have good right and title thereto and shall have, hold, and enjoy the same. Unless the owner or owners of said land, or those claiming under them, shall make claim or demand in writing addressed to the Board of Commissioners within two (2) years following the date when such land was taken, he or they shall be forever barred from recovering such land or having any compensation therefor; provided, nothing herein shall affect the rights of persons under disabilities until two (2) years following removal thereof.

"Section 8.2. Tort Claims. All claims or demands against the Town arising in tort shall be presented to the Board of Commissioners in writing, signed by the claimant or his attorney or agent, within ninety (90) days after such claim or demand is due or the cause of action accrues. No suit or action shall be brought on such a claim or demand within thirty (30) days or after the expiration of twelve (12) months from the time such claim or demand is presented. Unless the said claim or demand is so presented within ninety (90) days, and unless suit is brought within twelve (12) months thereafter, any action thereon shall be barred.

"ARTICLE IX. GENERAL PROVISIONS

"Section 9.1. Health and Well-Being of Citizens. The Board of Commissioners of the Town shall have the power and the right to adopt such rules and regulations for the effective policing of the Town as they may deem necessary, and to take all necessary steps for the proper enforcement of the same; and the Board of Commissioners shall have the right and the power to adopt such rules and regulations for the preservation and protection of the health and well-being of the Town and its citizens as they may deem necessary, and to take all necessary steps for the proper enforcement of the same.

"Section 9.2. North Carolina General Statutes. The Town shall have the benefit of and be subject to all the provisions of Chapter 160 of the General Statutes of North Carolina and all laws amendatory thereof, and shall have the benefit of and be subject to all the provisions of all general laws regulating towns and cities, except in so far as said Chapter 160 and the aforesaid laws are modified and changed by the provisions of this Town Charter."

Sec. 6. If any provisions of this Act or the application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provision or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable.

Sec. 7. All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 8. Subject to the provisions of Sections 1 through 3 hereof, this Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 13th day of June, 1969.