

Special Report

**West Virginia Prosecuting
Attorneys Institute**

**The West Virginia Prosecuting Attorneys
Institute's Resources and Staff Were Used for
Three Charnock Political Campaigns**

**William Charnock and Kasey Warner, the
Former United States Attorney for the Southern
District of West Virginia, May Have Violated
State Election Laws During Charnock's
Campaign for Kanawha County Prosecutor**



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John Sylvia
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November 13, 2005

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
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The Honorable J.D. Beane
House of Delegates
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1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

We are transmitting a Special Report on the West Virginia Prosecuting Attorneys Institute, which will be presented to the Joint Committee on Government Operations on Sunday, November 13, 2005. The issues covered herein are "The West Virginia Prosecuting Attorneys Institute's Resources and Staff Were Used for Three Charnock Political Campaigns;" and "William Charnock and Kasey Warner, the Former United States Attorney for the Southern District of West Virginia, May Have Violated State Election Laws During Charnock's Campaign for Kanawha County Prosecutor."

We transmitted the final draft of the report to the chair of the West Virginia Prosecuting Attorneys Institute's Executive Council on November 11, 2005. We received the agency response on November 12, 2005.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

JS/wsc

Joint Committee on Government and Finance

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Review Objective, Scope and Methodology

This Special Report of the Prosecuting Attorneys Institute is required and authorized by West Virginia Code §4-2-5 as amended. The report was initiated as a result of concerns brought to the attention of the Legislative Auditor by the Division of Criminal Justice Services regarding time sheets submitted by the Prosecuting Attorneys Institute for July and August 2004. Time sheets were submitted for reimbursement of federal grant funds administered by the Division of Criminal Justice Services. Upon review of the time sheets, the Division had determined and informed the Institute that 90% of the assistant prosecutor's salary could not be reimbursed. As a result, the Institute resubmitted time sheets for July and August 2004 which increased the amount of work hours for the assistant prosecutor. This raised a red flag with the Division, and representatives contacted the Legislative Auditor in November 2004 to discuss their concerns. The Legislative Auditor thus began auditing the time sheets and all pertinent data, and released a report in May 2005. As part of the methodology of addressing the time sheet issue, the Legislative Auditor reviewed the laptop assigned to Mr. William Charnock during his employment at the Prosecuting Attorneys Institute. The intent was to find communications from Mr. Charnock addressing the time sheets. It was during this time that campaign material was found on Mr. Charnock's computer. As a result, the Legislative Auditor obtained the laptop, and analyzed the computer hard drive with EnCase® Enterprise Edition computer forensic software.

Objective

The objective of this review was to determine whether Mr. William Charnock used state resources and state employees for the purposes of his campaign for Kanawha County Prosecutor; his brother's campaign for City of Charleston Treasurer; and his sister's campaign for Kanawha County Family Law Judge.

Scope

The scope of the documentation reviewed for the report was 2002 - 2004.

Methodology

Information used in compiling this report was gathered from the laptop hard drive of Mr. William Charnock using EnCase® Enterprise Edition. In addition, campaign finance forms from Jane Charnock's campaign for Family Law Judge and William Charnock's campaign for Kanawha County Prosecutor were obtained from the Kanawha County Circuit Clerk. John Charnock's campaign finance forms for his campaign for Charleston City

Treasurer were obtained from Charleston City Clerk's office. The methodology also included interviews with staff from the Prosecuting Attorneys Institute. Every aspect of this review complied with Generally Accepted Government Auditing Standards(GAGAS).

The West Virginia Prosecuting Attorneys Institute's Resources and Staff Were Used for Three Charnock Political Campaigns.

On January 19, 2005, the Legislative Auditor reviewed the laptop computer of former Executive Director William Charnock as part of the audit of the West Virginia Prosecuting Attorneys Institute. The Legislative Auditor reviewed the laptop in order to determine whether there were any communications between Mr. Charnock and the assistant prosecuting attorney regarding resubmitting modified time sheets in an attempt to increase its federal Byrne grant reimbursements. During the review of the computer, the Legislative Auditor found several Microsoft Publisher files that appeared to be campaign flyers for the political campaign of Mr. Charnock's sister. In 2002, Mr. Charnock's sister ran for Kanawha County family law judge. In addition, the Legislative Auditor found letterhead in Microsoft Publisher format for Mr. Charnock's Kanawha County Prosecutor campaign. The Legislative Auditor also met with current staff members of the Prosecuting Attorneys Institute. **Staff stated that Mr. Charnock was rarely in the office during September and October 2004, during which time he was running for Kanawha County prosecutor. In addition, the paralegal for the Institute informed the Legislative Auditor that Mr. Charnock requested that she and another staff member proof one of his campaign letters. The Institute's paralegal also was requested by Mr. Charnock to contact the Charleston Marriott to schedule and plan one of his fund raisers.** She informed the Legislative Auditor that she complied with his requests. These activities occurred during work hours. The cursory review of the computer and statements from Institute staff was enough evidence to indicate that Mr. Charnock may have used the laptop for political fund raising. Thus, with written permission from the Chairperson of the Institute's Executive Council, the Legislative Auditor acquired the Institute's laptop assigned to Mr. Charnock for computer forensic analysis of the hard drive.

The Legislative Auditor Analyzed Mr. Charnock's State-Issued Laptop Computer

On March 2, 2005, the Legislative Auditor obtained Mr. Charnock's laptop computer that had been assigned to him while he was the executive director of the West Virginia Prosecuting Attorneys Institute. Forensic analysis began on March 3, 2005 with the use of EnCase® Enterprise Edition computer forensic software. With "keywords," EnCase® Enterprise Edition searches the hard drive's sectors for specified words within documents, emails, system files, unallocated clusters, etc. Thus, the Legislative Auditor used keywords and phrases such as: donors; campaign; KanawhaCounty

Prosecutor; and individuals' names either within the Prosecuting Attorneys Institute or individuals who the Legislative Auditor knew were affiliated with Mr. Charnock. The keyword searches resulted in well over 100,000 "search hits." Review of the search hits shows evidence that Mr. Charnock used his state issued laptop to work on his campaign for Kanawha County Prosecutor; his sister's campaign for family law judge; and his brother's campaign for city of Charleston treasurer. Evidence also shows that Mr. Charnock used staff of the West Virginia Prosecuting Attorneys Institute to work on the campaigns, and he worked on these campaigns during state work hours. There is no data showing Mr. Charnock taking annual leave or removing himself from the state payroll during his work on these campaigns. However, it must be noted that his position as Executive Director was exempt from receiving or having to take annual leave. It is clear from the documents and emails retrieved from the computer that Mr. Charnock spent a significant amount of time during work hours with state-issued equipment working on his campaign and his siblings' campaigns. **In essence, Mr. Charnock was heavily involved in his family's campaigns, and essentially ran three campaigns with the taxpayers' dollar.** The following evidence will show that Mr. Charnock ran three campaigns:

1. During state work hours,
2. Using state issued equipment (computer, copier/printer, wireless phone),
3. Using state issued internet access, and
4. Using Prosecuting Attorneys Institute employees during state work hours.

Charnock Violated the State Ethics Law

By using his office to operate his personal and families' political campaigns, Mr. Charnock violated state ethics laws.

West Virginia Code §6B-2-5 (b) prohibits **use of public office** by a public employee for **private gain of the employee or of another**. The Code states:

A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary duties associ-

ated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

In addition, West Virginia Code §6B-2-5(c) states:

A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family....

State Ethics Commission Legislative Rules further delineate in §158-6-4 public employees use of “subordinates” for public gain. Rules state in §158-6-4.2:

4.2. During work hours - Public officials and public employees shall not use subordinate employees during work hours to perform private work or provide personal services for their benefit... This subsection does not apply to de minimis work or services.

§158-6-5 discusses the use or removal of government “property” and states the following in 5.2:

5.2 Improper Use - Public officials and public employees shall not use government property for personal projects or activities that result in private gain. This subsection does not apply to the de minimis use of government property.

Evidence from Mr. Charnock’s laptop shows that Mr. Charnock, as a public employee, engaged in activities with his state-issued computer during state work hours which benefitted his campaign for Kanawha County Prosecutor. **Evidence shows that William Charnock used his office, office staff and equipment, and state-issued internet access provided by the the West Virginia Prosecuting Attorneys Institute to essentially run three political campaigns.**

William Charnock and Another State Employee Worked During Office Hours and Used State Equipment to Work on His Sister's Campaign for Family Law Judge

During 2002, William Charnock's sister Jane ran for Kanawha County Family Court Judge. Evidence from email correspondence shows that Mr. Charnock used his office, office staff and equipment, and state-issued internet access to assist in the campaign. Correspondence times show that this work was conducted during state work hours.

The evidence is as follows:

1. Email dated Thursday, July 25, 2002, at 8:21 a.m. from William Charnock to the Prosecuting Attorneys Institute's database administrator. This email was sent during work hours with Mr. Charnock's state internet account to the database administrator's state internet account:

Dude:

Tried to access Publisher but it needs a CD to complete its installation - would you install please. Trying to come up with some ads for Jane.

Thanks.

The Legislative Auditor found four campaign ads on Mr. Charnock's computer created in Microsoft Publisher for his sister's campaign (Appendix A). In addition, Microsoft Publisher was also found on the computer.

2. Email dated Tuesday, July 30, 2002, at 8:56 a.m. from William Charnock to his sister Jane Charnock. This email was sent during work hours with Mr. Charnock's state internet account:

Orenthal Jane:

We have ads w/checks to five schools.

For the three schools that did not get back wiff me, I sent an ad and axed them to invoice us.

I have attached the ad; if it does not go through/appear correctly, whatever, let me know and I can fax you a copy.

It be in Microsoft publisher.

AMF

3. Email dated Friday, August 30, 2002, at 9:55 a.m. from William Charnock to his sister Jane Charnock. The email discusses Jane's ads that were purchased for the George Washington High School football program. This email was sent during work hours with Mr. Charnock's state internet account:

Judge Jane:

JN bought a GW program and the full page ad looks good - the program is pretty big; lots of law firm ads and not too many political ads. I think Shelly, Mitchell and Harrison and two or three house candidates and yours were the only political ones. It looked pretty good. We'll have to go get the other ones.

More importantly, however,

Everybody have fun tonight,

Everybody Wang Chung tonight.

And,

Did I ever tell you about how I was drunk the day Pat got out of prison and I went to pick her up in the rain but before I could get to the station in my pickup truck she got runned over by a damned old train?

12 year old signing off

4. Emails dated Friday, September 13, 2002, from 3:45 p.m. to 5:01 p.m. between William Charnock, the Prosecuting Attorneys Institute database administrator, and Jane Charnock. The emails were regarding the purchase of software and hosting sites to create the campaign web site. All but the final email were sent during work hours and all between Mr. Charnock and the database administrator were sent using state issued internet accounts. One email is from GoDaddy software indicating that the internet domain name registration was shopped for and purchased during work hours.

The Institute's records indicate that the database administrator did not take annual leave on this day.

5. Email dated September 16, 2002, at 11:21 a.m. from the Prosecuting Attorneys Institute's database administrator to William Charnock attaching the Jane Charnock web site that he created, and offering to create any types of Flash animation that Jane wants. The email was forwarded to Jane Charnock at 12:34 p.m. The database administrator used his personal email to send to Mr. Charnock's state internet account. Mr. Charnock forwarded the email with his state internet account. Both emails were during state work hours. The Institute's records indicate that the database administrator did not take annual leave on this day.
6. Email dated September 16, 2002, at 1:39 p.m. from William Charnock to an unknown individual attaching an ad for Jane. This email was sent during work hours with Mr. Charnock's state internet account.
7. Email receipt from GoDaddy software dated Friday, October 25, 2002, at 3:58 p.m. The receipt is for an email account and web site hosting. This email was received during work hours indicating that Mr. Charnock shopped for the campaign during state work hours with his state internet account. Followup email was made to the database administrator regarding the GoDaddy order.
8. Eleven emails between Mr. Charnock and others including the database administrator; his sisters Anne and Jane having various discussions about the web page. The emails were dated October 25, 2002 - November 7, 2002, and were conducted during state work hours using Mr. Charnock's state internet account. The Institute's records indicate that the database administrator did not take annual leave during this period of time.
9. Four emails dated November 11, 2002. While this was a state holiday these emails were sent from Mr. Charnock's state internet account, and one was sent from the database administrator's state email account. Included in these emails is a message to his sister Jane:

Judge Jane:

Attached is an excell doc. showing precinct by precinct the vote totals for Shelly, Harrison, you and Mike Kelly. JN axed me to put this together; I am giving him a paper version. I copied Blanche on the electronic version.

AMF

This email indicates that Mr. Charnock used his state-issued computer to create the Excell document in addition to transmitting the document.

The Legislative Auditor finds that Mr. Charnock used state resources to help run his sister Jane Charnock's campaign for Family Law Judge during work hours, and used state-provided resources to do so. The Legislative Auditor finds that this is a violation of state ethics laws, and violates the trust that taxpayers put in employees of the state of West Virginia.

William Charnock Used State-Issued Equipment and State-Issued Internet Access for His Brother's Campaign for City of Charleston Treasurer

During 2003, William Charnock's brother, John Charnock, ran for City of Charleston Treasurer. Evidence from email correspondence and documents attached to emails prove that Mr. Charnock used his office, office staff and equipment, and state-issued internet access to assist in the campaign. This included printing off campaign material/letters at the Institute office and maintenance of John Charnock's donor list. Correspondence times show that this work was conducted during state work hours. **It should be noted that Mr. Charnock reimbursed his office \$13.35 for office paper used in his brother's campaign. According to the Institute's fiscal officer, this \$13.35 reimbursement was the only reimbursement Mr. Charnock ever made while he was employed with the Institute for any personal use.** In addition, following the May 2005 release of the Prosecuting Attorneys Institute audit by the Legislative Auditor, Mr Charnock reimbursed the Institute for \$933.73. This was the amount of personal use that the Legislative Auditor determined that Mr. Charnock used with his state-issued wireless telephone.

The evidence as follows proves Mr. Charnock's involvement in the campaign:

1. Email dated Tuesday, February 18, 2003, at 2:09 p.m. from the Prosecuting Attorneys Institute's database administrator to William Charnock with 17 campaign pictures attached of John Charnock. The Legislative Auditor was informed by the database administrator that he worked on the www.votecharnock.com web sites for all three family campaigns. The database administrator does not recall taking the pictures, but does remember using them for the web site. State email accounts were used by the database administrator and emails were

sent to Mr. Charnock's state email account during state work hours. The Institute's records indicate that the database administrator did not take annual leave on this day.

2. Email dated Thursday, February 20, 2003, at 10:46 p.m. from the Prosecuting Attorneys Institute's database administrator to William Charnock. This email attached the database administrator's Adobe Acrobat copy of the www.votecharnock.com web site. The email was sent by the database administrator's personal email account to Mr. Charnock's state email during non-working hours.
3. Email dated Friday, February 21, 2003, at 8:14 a.m. from William Charnock to the Prosecuting Attorneys Institute's database administrator thanking him for the web site attachment, and stating that it looked good. Mr. Charnock also copied Jane and John Charnock for their review. This email was sent during work hours with Mr. Charnock's state internet account. The Institute's records indicate that the database administrator did not take annual leave on this day.
4. Email dated Friday, February 21, 2003, at 10:06 a.m. from sister Anne Charnock to William Charnock stating that she liked the web site. This email was sent during work hours to Mr. Charnock's state internet account.
5. Email dated Friday, February 21, 2003, at 11:02 a.m. from William Charnock to his brother John Charnock asking him to email the date of the municipal general election to the database administrator to put on the web page. This email was sent during work hours from Mr. Charnock's state internet account.
6. Email dated February 24, 2003, at 9:05 a.m. from William Charnock to two Prosecuting Attorneys Institute employees. Mr. Charnock asks the employees to check out the new www.votecharnock.com web site. This email was sent during work hours from Mr. Charnock's state internet account. He states:

I know there is a prohibition about state stuff vs. personal stuff, but, since Clyde [the database administrator] did it, it is O.K. It bears repeating: Clyde's the man

7. Email dated Wednesday, February 26, 2003, at 8:36 a.m. from William

Charnock to sisters Jane and Anne Charnock requesting for them to tell “us” what the web site should say as far as disclaimers. Mr. Charnock also stated that he was sure that the database administrator would put the disclaimers up. This email was sent during work hours from Mr. Charnock’s state internet account.

8. Two followup emails on Wednesday, February 26, 2003, at 9:32 a.m. and 10:46 a.m. from Anne Charnock to William Charnock and sister Anne Charnock discussing whether the web site from Jane’s campaign should be considered an in-kind contribution. These emails were sent during work hours to Mr. Charnock’s state internet account.
9. Email dated Tuesday, March 4, 2003, at 8:17 a.m. from William Charnock to the Prosecuting Attorneys Institute’s database administrator requesting him to put a quote about John Charnock from the Charleston Daily Mail on the web page. This email was sent during work hours from Mr. Charnock’s state internet account to the database administrator’s state internet account. The Institute’s records indicate that the database administrator did not take annual leave on this day.
10. Email dated Wednesday March 5, 2003, at 7:11 a.m. from the Prosecuting Attorneys Institute’s database administrator to William Charnock stating that the Charleston Daily Mail quote had been added. This email was sent during non work hours from the database administrator’s state internet account to Mr. Charnock’s state internet account.
11. Email dated Wednesday, March 5, 2003, at 8:19 a.m. from William Charnock to sisters Jane and Anne Charnock informing them that the database administrator had made the requested changes to the web page. This email was sent during work hours from Mr. Charnock’s state internet account.
12. Email dated Sunday, March 9, 2003, at 8:35 p.m. from sister Anne Charnock to William Charnock, sister Jane, and Jim and Lynne Slamick attaching a 12 page Microsoft Word document listing people to invite to John Charnock’s fundraiser dated March 22. This email was sent during non-work hours to William Charnock’s state internet account.
13. Email dated Wednesday, March 12, 2003, at 1:23 p.m. from sister Anne Charnock to William Charnock and several family members attaching the primary election results. This email was sent during work hours to Mr. Charnock’s state internet account.

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14. Email dated Wednesday, March 12, 2003, at 1:34 p.m. from William Charnock forwarding the election results to employees of the Prosecuting Attorneys Institute. This email was sent during work hours from Mr. Charnock's state internet account to the employees' state internet accounts during work hours.
15. Email dated Wednesday, April 16, 2003, at 2:19 p.m. from William Charnock to brother John Charnock with a sample thank you letter. Email states as follows:

John, Try something like this:

*Tonia Thomas
c/o WV Division of Criminal Justice Services
1204 Kanawha Boulevard, East
Charleston, WV 25301*

Tonia:

*It was a pleasure talking with you at the (insert name of function here). Thank you for your service to our city. Your efforts make our city a much more enjoyable place to live.
Your selfless acts are truly appreciated.*

Regards,

John Charnock

If you have a program from the ceremony, send something like this to everyone on there. Judge Kaufman does notes like this to everyone and I don't know of an election he has lost. I have started sending out notes like this to everyone I come in contact with. I can help you with other ones if you want me to.

This email was sent during work hours from Mr. Charnock's state internet account.

16. Email dated Wednesday, May 7, 2003, at 1:52 p.m. from William Charnock to sister Anne Charnock. Email states as follows:

Blanche:

I am writing my office a check for 13.35 which covers one batch of paper (the batch is 500 sheets; I used 200). I also spent 184.00 on stamps. Linda gave me the labels and I used office printer. I told Linda you would put all of this on JPs report. Yell at me if you need anything else. Later.

This email was sent during work hours from Mr. Charnock's state internet account, and **clearly states that he used the Prosecuting Attorneys Institute's printer to produce campaign material for his brother.**

The Legislative Auditor finds that Mr. Charnock helped run his brother John Charnock's campaign for Charleston City Treasurer during work hours; used state-provided resources; and used state employees as well. The Legislative Auditor finds that this is a violation of state ethics laws, and violates the trust that taxpayers put in employees of the state of West Virginia.

William Charnock Used State Equipment and State Employees to Work on His Campaign for Kanawha County Prosecutor

Evidence from Mr. Charnock's computer shows that Mr. Charnock used his state-issued laptop computer and his state-issued email account for his campaign for Kanawha County Prosecutor. Evidence from email correspondence and through documents attached to emails proves that Mr. Charnock used his office, office staff and equipment, and state-issued internet access to assist in the campaign. This included printing campaign material/ letters and requests for donations to his political campaign and campaign fund raisers. Correspondence times show that this work was conducted during state work hours.

EnCase® Enterprise Edition recovered a significant number of emails and evidence that databases, documents, and Microsoft Excel spreadsheets that were used for the campaign existed on the computer at one time. It is the opinion of the Legislative Auditor that almost all of the 2004 campaign files were deleted. According to the database administrator at the West Virginia Prosecuting Attorneys Institute:

Bill asked me to clear out his computer so that nothing could be found. I told him that the auditors might have software to restore any files. He then told me not to do it.

In addition, the database administrator stated:

*There were campaign documents on his computer at one time.
(Maybe a folder called '04 Stuff')*

Before the database administrator provided the Legislative Auditor with this statement, the Legislative Auditor had already found references to the "04Stuff" folder from the analysis of the hard drive. This folder existed on the Microsoft Windows desktop of Mr. Charnock's computer. Analysis of the computer led to the suspicion that campaign documents had existed within this folder. The database administrator's statement verifies this, although these files could not be recovered by the Legislative Auditor.

As stated previously, the Legislative Auditor did recover a significant number of emails to and from Mr. Charnock discussing the campaign, fundraising, etc. by using EnCase® Enterprise Edition computer forensic software. In addition, several other types of campaign-related files were recovered such as databases, fundraising letters, form letters, and press releases. The majority of campaign-related emails were within two recovered Microsoft Outlook .pst files, and some of the campaign-related files were attachments to Outlook emails. The Legislative Auditor was able to recover 183 campaign-related emails from the period between May 2002 and September 2003. **However, before July 1, 2003 there were only 39 campaign-related emails. The frequency of campaign-related emails changed dramatically after July 1, 2003 with 144 emails being sent between July and September 2003.** The Legislative Auditor could not recover the Outlook .pst file(s) containing the emails from October 2003 through December 2004. However, the Legislative Auditor was able to recover and reconstitute some previously deleted emails from the time period of October 2003 through December 2004.

If the pattern of campaign-related emails continued after September 2003 at the same rate as the three months before, then it is possible that Mr. Charnock could have generated over 700 campaign-related emails in the 14 months leading to his election in November 2004. (It is standard practice in an audit report to forecast projections in such situations.)

While the Outlook .pst files could not be recovered following September 2003, some emails from 2004 were recovered in "Unallocated clusters." Unallocated clusters are parts of a computer hard disk that are flagged as being empty, either because no information has been stored there, or because information was stored there and has been marked as deleted. When a file was previously stored on that part of the disk and has not since been overwritten, it is often possible to view the file's original contents. EnCase® Enterprise Edition computer forensic software enabled the Legislative Auditor to view the

unallocated clusters, and emails and other documents were able to be viewed.

Following are 25 examples of Mr. Charnock's campaign-related emails and campaign related files that were recovered from the laptop hard drive that was assigned to him while he was employed as Executive Director of the Prosecuting Attorneys Institute. The final two examples specifically show his use of office staff.

1. Email dated Wednesday, July 2, 2003, at 12:01 p.m. from William Charnock to Les Milam. This was a submission to Mr. Milam of Mr. Charnock's resume. This email was sent during work hours with Mr. Charnock's state internet account.
2. Email dated Thursday, July 03, 2003, at 7:27 a.m. discusses Mr. Milam's becoming Mr. Charnock's campaign advisor. Mr. Milam states:

I can work with the resume and make it into the story of Bill Charnock, so to speak. . It needs to be condensed and made to sound a tad more dramatic. ...As for our financial arrangement, I'm going to charge you an initial retainer of \$1,500. That means I will work with you exclusively in the coming election. I will do no other county races. I see no reason to even worry about any type of monthly fee until sometime after Labor Day.

This email was sent during non-work hours to Mr. Charnock's state internet account, although Mr. Charnock forwarded the email to his sister on the same day during work hours.

3. Email dated Friday, July 18, 2003, at 10:39 am. from Mr. Milam to Mr. Charnock. This was a discussion of one of Mr. Charnock's prospective fund-raisers. This email was sent during work hours to Mr. Charnock's state internet account.

That's great, Bill. I'm working on getting the fundraiser organized on the boat and will get it lined up as soon as I can catch Charlie. This is going to be \$250 per couple and my guess is that we will end up with about 25 to 30 couples.

4. Email dated Friday, July 18, 2003, at 11:50 a.m. from William Charnock to Les Milam. This was a discussion of Mr. Charnock's fund-raising list. This email was sent during work hours with Mr. Charnock's state internet account.

Sounds good to me. I should have most of these letters out by Monday. I am in the process of striking duplications between Fosters, the bar and my list. I would hope my dad could round up some money people as well.

These four emails between Mr. Charnock and Mr. Milam are representative of the other 65 emails which were sent between the two men from July 2, 2003 through September 11, 2003, planning Mr. Charnock's campaign.

5. Email dated Sunday, July 06, 2003 2:00 PM from Anne B. Charnock to Bill Charnock. This email was sent to Mr. Charnock's state email account during non-work hours. This was a discussion of the Charnock family's fund-raising lists and the Vote Charnock web site maintained by the Institute's database administrator. It must be noted that the database administrator was listed in Mr. Charnock's campaign finance forms as receiving \$250 for web site design.

I'm attaching John's donor list from 2003 (I don't have the 1999 campaign reports but I don't think JPC ever pulled those out this time) as well as the list we used for the fundraiser. This is pretty much Jane's fundraiser list with some tweaks. Both are in Word. Yell if you need anything else. Yell if either/ both don't appear.

What's Clyde [the database administrator] going to do with the website?

6. Email dated Sunday, July 06, 2003, at 9:31 p.m. from the Institute's database administrator to Mr. Charnock. This email was sent to Mr. Charnock's state email account during non-work hours from the database administrator's personal email account.

Dude,

Attached are seven word documents that I came up with. See what you think. You can make any changes easily with Microsoft Word. Talk to you later.

Clyde

7. Email dated Thursday, July 10, 2003, at 3:47 p.m. from Fred Giggenbach's (Prosecuting Attorneys Institute's lawyer) personal email

account to Mr. Charnock's state email account. The Institute's records indicate that Mr. Giggenbach did not take annual leave on this day.

....Oh, I showed up at the Clifford impeachment hearing w/ a "Charnock for Proecutor" t-shirt, was that o.k.?

Mr. Charnock responded from his state email account on Thursday July 14, 2003 at 2:47 PM stating:

Did you accept, and more importantly, did you accept any checks for the campaign?

8. Email dated Thursday, July 17, 2003, at 11:16 a.m. from the Institute's database administrator to Mr. Charnock. This email was sent to Mr. Charnock's state email account during work hours from the database administrator's personal email account. The Institute's records indicate that the database administrator did take annual leave on this day. According to the Institute's database administrator, this email had attached as a Microsoft Word document Mr. Charnock's fund-raising letter. **Notice that the email encourages Mr. Charnock to "print the letter to the copier because it will be faster."**

Dude,

You will have to unzip this file. Save the attachment, once saved, double click on Fund letter.zip. Once WinZip starts up, click on Use Evaluation Version. Then click on Extract. Click on Desktop in the right hand window and then click on extract. There should now be a Fund letter.doc on your desktop. Double click on it and word should open up. I would print the letter to the copier because it will be faster. If you have any problems, call me.

The Legislative Auditor provided the database administrator with copy of this email. Although he could not remember the email, he stated:

...it sounds as if we are talking about the campaign fund letters and it sounds as if he may have printed the letters at the Institute.

Mr. Charnock responded from his state email account on Thursday, July 17, 2003, at 9:18 a.m. to the database administrator's state email account during working hours stating:

Dude:

Thanks for helping me with this. I would like to go ahead and do labels and letters for the bar - I will then do labels and letter for the other list once I complete it (which hopefully will be by this weekend). I bought the Office Max brand label, number 86101 (size is 1 x. 25/8). I won't be able to do the letters until I get my letterhead on Friday.

Thanks again.

9. Email dated Friday, July 18, 2003, at 11:15 a.m. from Mr. Charnock to Mr. Milam. This email was sent during office hours with Mr. Charnock's state internet account.

Les: Stationary is supposed to be ready this afternoon. I have attached the text of the letters. My computer guy did the mail merge thing so all I need to do is hit print and stuff, peel, stick and send. I will have it going to the bar, Foster's list and to a list I created of people that helped either my brother or sister. Best, Bill Charnock

These Microsoft Access databases were recovered from Mr. Charnock's laptop computer. The Foster's list database had 1,056 names listed; the state bar list had 1,586 names listed; and the other database was called "Donors list," which had 359 names listed. **Thus, Mr. Charnock may have initially printed off as many as 3,001 campaign form letters using office equipment.** The discussion of printing out these form letters is in example #11, which is an email correspondence with Mr. Charnock's wife.

10. Email dated Friday, July 18, 2003, at 11:44 a.m. from Mr. Charnock to the Institute's database administrator. This email was sent from Mr. Charnock's state email account to the database administrator's state email account during work hours. The Institute's records indicate that the database administrator did not take annual leave on this day. The discussion is again referring to the database lists for campaign donations.

Dude: Here is another list. Whenever you get a minute, would you mind to set it up for lables and for the letter. I have attached the letter and the list. I am in the process of editing a third and final list. Once it is done, is there a way we can merge the three lists into 1? If we can, then I won't have to fool with three different lists and it will be much simpler to

manage. Hopefully, I'll start getting some checks - when that happens, we need to figure out how to, with the push of one button, send out a thank you letter (I have one typed) and also keep a record of the donation (amount, date, etc) for reporting purposes. Thanks again.

Enjoy Cleveland.

Attached to this email was a Microsoft Word document titled "Fundraising letter.doc" and the database list titled "donorslist.zip."

11. Email also dated Friday, July 18, 2003, at 2:06 p.m. from Mrs. Charnock to Mr. Charnock. This email asks Mr. Charnock when he is coming home. It was sent to Mr. Charnock's state email account during work hours.

when are you going home? I now have voice mail.

Mr. Charnock responds in an email dated Friday, July 18, 2003, at 3:05 p.m. from his state email account:

I don't know - I am trying to get a bunch of stuff printed but Amy is hogging the copier so I am having a hard time - I want to get this crap done but if she aint done by 3:30 I will come back in the morning. I really want to get as much done before everyone comes over sunday night so they can help me with my mailing. I charged 350 for my stationary and envelopes - we will need to buy stamps (about 2,000). I will prepare a loan agreement so once we start getting checks in we can repay ourselves.

Combined with the emails above and information provided by the Institute's database administrator, **Mr. Charnock is clearly complaining that he cannot get his campaign fund-raising letter printed because state employees are using the state owned copier to do state work.** The Charnock for Prosecutor fund raising letter is shown in Appendix B.

12. Email dated Tuesday, July 22, 2003 at 10:53 AM from Mrs. Charnock to Mr. Charnock's state email account and other individuals including Mr. Giggenbach at his private email account.

Assuming the weather cooperates, we hope to see everyone at the game tonight for "Two for Tuesday". In the event of

rain, the Charnocks will be hosting a "Rain Delay" party at their home. The party will involve alcohol, folding, stuffing and licking (perhaps even some tape and glue). That is all I can say in writing. Use your imagination and come one, come all.

*If you need more information, call me at 389.6870, Bill at 541.2494 or our marital estate at 345.0216.
Thanks!*

Kelly

Notice that Mrs. Charnock encourages the recipients to call Mr. Charnock on his state-issued wireless phone.

13. Email dated Monday, August 04, 2003, at 9:44 p.m. from a Mr. Holstein to Mr. Charnock at his state email account.

Just wanted to let you know of my excitement that you are going to be the next PA in Kanawha County. I and my family are behind you 100%. Would like to help in any way we can. Let me know if there is anything I can do down in the Western end of the County. We would be willing to help with a fundraiser, signs, door to door or whatever. Tell me who I should get with in your campaign, and I'll do my part.

Mr. Charnock replies on Monday, August 04, 2003 at 9:59 PM from his state email account during work hours.

*Dan: One of the best and easiest things you guys could do would have a little meet and greet - invite a bunch of your friends, acquaintances, fellow church members etc to your house as a meet the candidate type gig. No donations required but we would not turn any away but the important thing would be to meet people. I want to meet as many folks as I can but with a county this size, it won't be possible. Let's stay in touch.
Bill Charnock*

Mr. Holstein then replies in an email dated Monday, August 04, 2003 , at 9:18 p.m.

Bill,

A meet and greet sounds perfect. I'll get to work on a list of people I could invite. Amanda gets back in town next Wednesday, and I will call you after that to find out what's good for you (day and time, etc.) . .

Mr. Charnock is clearly using his state email account to raise campaign funds.

14. Email dated Tuesday, August 05, 2003 at 9:34 PM from Mr. Charnock to Mr. Milam. This email was sent from Mr. Charnock's state email account.

Les: Nice letter to the editor in tonight's daily mail. Inmate mail is the best; inmate spouses are a close second. Couple of things:

1) Got a call from the asshole at the statehouse (tom susman - he is my agency's cabinet secretary) who told me there is talk at the statehouse wondering how I can be a candidate and a state employee - not from a legal standpoint but from an ethical standpoint - he said legislators were talking about it and he called me just to give me a heads up and to prepare myself for the question when it arises. Any suggestions? I am will and pleasure of a board; I asked my board if they wanted me to resign prior to filing pre-candidacy papers. They unanimously said no. They even went so far as to say as long as the Kanawha prosecutor is not seeking re-election or if the appointed does not seek the election, I could keep my job and run. My response to asshole was I told my board, they support me so be it. Any suggestions on how to address it? 2) Daily Mail seems to be real helpful thus far - should we offer to take any of them to lunch? I have spoken to Bob Kelly about a couple of issues before but never met face to face. Would be nice for me to meet him and shoot the shit but I defer to your advice/suggestions about that. In Flatwoods now, to Beckley tomorrow and home Friday - will attend the Kana. Co. GOP women meeting at noon Friday and plan to shake a whole bunch of hands. Later, Bill Charnock

Mr. Milam responds in an email dated Wednesday, August 06, 2003, at 9:16 a.m. to Mr. Charnock's state email account.

Bill:

*Keep on keeping on. Don't worry about Susman. **You aren't using your job to run for office and there is no conflict.** If it comes up, call me before you respond to any question. Get in a habit of doing that. Remember, you can call me at home any time you need to.*

Les (Emphasis Added)

15. Email dated Thursday, August 14, 2003, at 2:33 p.m. from Mr. Charnock to a representative from the Clay Center. This email was sent from Mr. Charnock's state email account during work hours.

Ann: Many thanks for the tour of the Clay Center earlier this afternoon. My staff and I really enjoyed it. What an impressive facility! I can't wait to take Will down there this weekend. He will have a ball. Thanks again. All the best, Bill Charnock

P.S. Please let Lee know the mailing you all helped with has raised me over \$5,000 thus far. Please mark September 30 on your calendar for a fundraiser on a sternwheeler down the mighty Kanawha river.

16. Email dated Thursday, August 21, 2003, at 2:43 p.m. from Mr. Milam to Mr. Charnock at his state email account during work hours.

Mr. Prosecutor:

I tried to attach this script to a e-mail but couldn't: So here it is:

This is Bill Charnock. . . I realize it may seem like I'm raising money pretty early but since next year is a big election year, so many people are going to be out doing the same thing that I felt I'd better get an early start before everyone else starts trying to raise money. In fact some people already have. . . I hate asking for money but since I'm not wealthy I have no choice and I think no race is more important than that of prosecuting attorney. So. Can I count on you for some help?

Note: If they say no, don't argue. If they say later. Say fine and then you can drop them a reminder note. Other than the above, wing it. Remember—you are a Charnock.

-
17. Email dated Thursday, September 04, 2003, at 10:25 a.m. from Mr. Charnock to a Ms. Orders. This email was sent from Mr. Charnock's state account during office hours.

Melissa: Attached is what I came up with - it is in Publisher. Let me know what you think and what corrections you want. If you can't open it, I'll fax it to you. Thanks again. Best, Bill C.

The Legislative Auditor's Office found on Mr. Charnock's computer a Microsoft Publisher document which is an invitation to attend a fund-raiser for Mr. Charnock's campaign at the Orders residence (see Appendix C). Mr. Charnock's campaign finance form shows that the Orders family did hold a fund-raiser for him raising \$550.

18. Email dated Thursday, September 11, 2003, at 10:04 a.m. from Mr. Charnock to Mr. Holstein. This email was sent from Mr. Charnock's state email account during work hours. The discussion is a followup to Mr. Holstein holding a fund-raiser for Mr. Charnock.

Dan: Wanted to follow up with you about your willingness to help out with the campaign. Over the next couple of months, several different folks are hosting meet and greet/fundraisers for me at their homes. The theory is to meet different folks and if they bring in some money, even better. If you'd be willing to host something like this, I'd really appreciate it. Give me a shout sometime to talk about it. All the best,

*Bill Charnock
558-3348 (w)
345-0216 (h)*

P. S. The order to remove Clifford is rumored to be entered tomorrow.

19. Form letter dated October 1, 2003, as discovered (Appendix B). There appear to be 438 individually addressed letters generated from Mr. Charnock's state-issued laptop. This campaign form letter contained Mr. Charnock's future ideas for running the Kanawha County prosecutors office, as well as an enclosed biography of himself. The form letters begin:

Now more than ever Kanawha County needs a prosecutor with the energy, integrity and experience to manage one of

the most important offices in government. That is why I have formed a committee and am in the process of making it possible to seek this office.

20. Press release dated March 29, 2004, titled “*Charnock Calls For Closer Working Relationship With Law Enforcement; Pledges Free Training.*” The campaign press release targets law enforcement officers for their support in the upcoming election by pledging free training and by stating Mr. Charnock’s experience as Executive Director of the Prosecuting Attorneys Institute.
21. Press release dated May 25, 2004. In the campaign press release, Mr. Charnock pledges to emphasize drug prosecutions as prosecuting attorney.
22. Email dated Friday, November 19, 2004, at 9:84 a.m. from Mr. Milam. This email was sent to Mr. Charnock’s state email account during work hours. Mr. Milam is stating that Mr. Charnock will make a good prosecutor, and is offering his availability for consultation.

Actually I think you will be a damn good prosecutor. I’m always available for consultation on an as needed basis. You have the opportunity to make some history if you watch what you do. Don’t let the Republicans hijack you. Think good government. It might work. After Thanksgiving, I would like to have a few minutes of your time, not to ask for a job but just to tell you a couple of things that might be helpful. Take care. I’m also more happy for your Dad than I am you. He’s a good man. By the way, I’m in Florida and it’s 84. See you after thanksgiving.

Les

Mr. Charnock responds by stating:

Hope you are having a good time ? it is 50 and raining here so enjoy. Let’s hook up for lunch when you get back.

23. Campaign thank-you letter dated November 19, 2004. This was a form letter Mr. Charnock sent to campaign supporters inviting them to his ceremonial swearing in ceremony. Seventeen of these thank-you letters were recovered from Mr. Charnock’s laptop. The form letters recovered appear to be from a mail merge document. The 17 letters for individuals with last names between W and Z were recovered by the Legislative Auditor’s Office.

November 19, 2004

Mr. Carter Zerbe
16 Arlington Ct
Charleston, WV 25301

Dear Mr. Zerbe

The 2004 election is past and, thanks to the help of you and others, I am the prosecutor-elect of Kanawha County. This is, of course, an exciting time for my family and me. We offer you sincere thanks for the confidence you placed in me. Your trust and support were key components of my victory. On December 3, 2004, I will participate in a ceremonial swearing-in ceremony. The ceremony will begin at 11 a.m. in Courtroom Number 4 at the Kanawha County Courthouse. Refreshments will be available after the event. As one of my supporters, I ask that you join my family and me for this occasion. It will be a great opportunity to renew our friendship and look forward to 2005. Again, thank you for your past support. I hope you can join my family and me on December 3. I look forward to seeing you again.

*Sincerely,
Bill Charnock*

24. Staff of the Prosecuting Attorneys Institute informed the Legislative Auditor that Mr. Charnock requested that they proof one of his campaign letters during work hours. In addition, the Institute's paralegal proofed Mr. Charnock's biography during work hours.
25. According to the Institute's paralegal, she was requested by Mr. Charnock to contact the Charleston Marriott to schedule and plan his November 14, 2003 fund-raiser. She informed the Legislative Auditor that she complied with his request and contacted the Marriott during work hours. The Legislative Auditor also found email correspondence between Mr. Charnock and the paralegal dated November 7, 2003 in which he thanked her for assistance with a fund-raiser at the Charleston Marriott. Mr. Charnock emailed the paralegal from his state-issued email account to her state-issued email account on November 7, 2003, at 1:20 p.m.

My sis has two of her Republican women friends to man said table. I appreciate you taking care of this. I was really impressed with the Marriott lady. This ought to work out well (as long as enough is raised to cover the expenses).

For Mr. Charnock's campaign for Kanawha County Prosecutor, the 25 examples shown above are a mere subset of the total emails, documents, and work performed by Institute staff that the Legislative Auditor found dealing with Mr. Charnock's campaign from July 2003 through November 2004.

The Legislative Auditor finds that Mr. Charnock ran his campaign for Kanawha County Prosecutor during work hours, and used state-provided resources, and staff to do so. The Legislative Auditor finds that this is a violation of state ethics laws. In addition, by using state resources and state employees to work on his own and his two siblings' political campaigns, Mr. Charnock may have violated the following West Virginia criminal statutes: §61-3-20 which provides a felony penalty for embezzlement; §61-3-22 which provides a felony penalty for including, altering, or omitting information on accounts kept by the state or county; §61-3-24(a) which provides that a person who obtains money, goods, property or services by false pretenses is guilty of larceny; §61-3-24(d) which provides that a person who is in receipt of labor, services, or other such things of value from another under false pretenses or representation with intent to defraud is guilty of theft of services; §61-3-24d which provides for a larceny conviction for obtaining money, goods, property or services by fraudulent schemes, of which the total value of such items received can be determined cumulatively.

The Prosecuting Attorneys Institute's Executive Council Established Guidelines Regarding Mr. Charnock's Campaign for Kanawha County Prosecutor

The Executive Council of the Prosecuting Attorneys Institute was informed in advance of Mr. Charnock's intentions to run for Kanawha County Prosecutor, and approved for him to do so while remaining Executive Director of the Institute. According to the Council's minutes from the January 29, 2004 meeting, the Director advised the Council that he was filing for office. According to the minutes, which were written and signed by Mr. Charnock:

The council established guidelines to include a prohibition of electioneering at the office and to prohibit campaigning by Institute staff.

While the Legislative Auditor was unable to obtain a copy of the guidelines, it is clear that the issue of Mr. Charnock's campaign was addressed by the Executive Council, and that Mr. Charnock was aware of the Council's directives. **Thus, Mr. Charnock intentionally ignored the directives and guidelines established by the Executive Council.** Additionally, according to a memo dated August 12, 2004, from two managers in the Legislative Auditor's Post Audit Division, Mr. Charnock admitted that he had been admonished by the Executive Council for using his office computer for writing and transmitting a campaign letter to the Charleston Gazette. The memo states that Mr. Charnock:

... went on to say that he realizes now that using the office computer to forward the article to the Charleston Gazette was wrong and he should not have done it. He told us that he had been admonished by his Executive Council on this past Tuesday that his actions in writing and transmitting the article were wrong.

The Legislative Auditor Finds That Mr. Charnock and His Siblings Should Have Listed an In-Kind Contribution By the State of West Virginia on Their Campaign Finance Forms

West Virginia Code §3-8-5 requires candidates for public office to file a campaign finance form listing all donors to their campaign. The Code states:

(a) Every candidate ... shall keep detailed accounts of every sum of money or other thing of value received by him or her, including all loans of money or things of value, and of all expenditures and disbursements made, liabilities incurred, by the candidate...

The evidence shows that Mr. Charnock used state resources including staff in order to run his campaign for Kanawha County Prosecutor. It also shows that Mr. Charnock used state resources for his siblings' campaigns for public office. The Legislative Auditor has identified the following state resources that were used during these campaigns: state provided office equipment (laptop computer, internet access, printer/copier, wireless telephone); state employees; and Mr. Charnock's work hours. Thus, Mr. Charnock and his siblings should have claimed these state resources as in-kind contributions to their campaigns. While the Legislative Auditor cannot determine the total cost, some costs could be determined. For example, the laptop that was assigned to Mr. Charnock was purchased by the Institute for \$2,765. The cost of the Microsoft Office

package, which includes Word, Publisher, and Access is as much as \$415. His monthly internet email account cost the Institute \$16.95 per month or \$203.40 annually. Mr. Charnock and his siblings clearly benefitted from the use of these state resources, and should have reported them on their campaign finance forms. In comparison, if a private individual or company donated staff and office space to Mr. Charnock or his siblings with a telephone, printer/copier, and a laptop with internet access for use during their campaigns, Mr. Charnock and his siblings would clearly be expected to include that contribution on their campaign finance forms. Thus, the same should apply to the State of West Virginia, although the State may not have been a willing contributor. In addition, the Institute's database administrator clearly worked on all Charnock campaigns, specifically on the votecharnock website. The database administrator was listed on Jane Charnock and William Charnock's campaign finance forms, but was not listed on John Charnock's campaign finance forms. In addition, the database administrator's website work should be included as an in-kind contribution by the State of West Virginia when the work was during state work hours. The database administrator should be listed as an in-kind contributor on John Charnock's campaign disclosure forms.

Mr. Charnock also received an annual salary of \$60,000 or \$5,000 per month. In addition to spending time on the campaign during work hours while being paid his salary, the Institute staff has stated that Mr. Charnock was frequently absent from work especially during September and October 2004.

The Legislative Auditor Shared Evidence and Relevant Documents With the United States Department of Justice, the West Virginia State Police, the West Virginia Secretary of State's Office, and the West Virginia Ethics Commission.

Evidence dealing with this issue was turned over to the United States Department of Justice on June 3, 2005. In addition, the Legislative Auditor met with the Superintendent of the West Virginia State Police on June 6, 2005. The evidence dealing with this issue was turned over to the West Virginia Secretary of State's office on June 30, 2005. In addition, the West Virginia Ethics Commission was contacted regarding this matter on October 21, 2005.

Conclusion

The Legislative Auditor concludes that the Prosecuting Attorneys Institute was used by Mr. Charnock as if it were the Charnock

family campaign headquarters. Mr. Charnock was working on these campaigns during work hours, and was getting paid his salary by the Institute. In essence, Mr. Charnock was being paid by the state of West Virginia to work on his and his family's personal political campaigns. In addition, Mr. Charnock used the Institute's office, staff, supplies, and equipment for his and his siblings' campaigns. It should be noted that Mr. Charnock has reimbursed his office \$13.35 for office paper used in his brother's campaign. According to the Institute's fiscal officer, this \$13.35 reimbursement was the only reimbursement Mr. Charnock ever made while he was employed with the Institute for any personal use. It must be noted that following the May 2005 release of the Prosecuting Attorneys Institute audit by the Legislative Auditor, Mr. Charnock reimbursed the Institute for \$933.73. This was the amount that Mr. Charnock used his state-issued wireless telephone for personal use.

In conclusion, the Legislative Auditor finds that Mr. Charnock ran his campaign for Kanawha County Prosecutor during work hours, and used state-provided resources and staff to do so. Moreover, Mr. Charnock clearly knew such use was inappropriate. In an email on February 24, 2003, commenting on work done by the Institute's data base administrator on his brother's political campaign, Mr. Charnock states:

I know there is a prohibition about state stuff vs. personal stuff ...

The Legislative Auditor finds that Mr. Charnock's use of the Institute's staff and resources was a violation of state election law §3-8-5 and ethics laws §6B-2-5(b); §6B-2-5(c); CSR §158-6-4; and CSR §158-6-5. In addition, by using state resources and state employees to work on his own and his two siblings' political campaigns, Mr. Charnock may have violated the following West Virginia criminal statutes: §61-3-20 which provides a felony penalty for embezzlement; §61-3-22 which provides a felony penalty for including, altering, or omitting information on accounts kept by the state or county; §61-3-24(a) which provides that a person who obtains money, goods, property or services by false pretenses is guilty of larceny; §61-3-24(d) which provides that a person who is in receipt of labor, services, or other such things of value from another under false pretenses or representation with intent to defraud is guilty of theft of services; §61-3-24d which provides for a larceny conviction for obtaining money, goods, property or services by fraudulent schemes, of which the total value of such items received can be determined cumulatively.

William Charnock and Kasey Warner, the former United States Attorney for the Southern District of West Virginia, May Have Violated State Election Laws During Charnock’s Campaign for Kanawha County Prosecutor.

During the review of William Charnock’s computer with the EnCase® Enterprise Edition computer forensic software, the Legislative Auditor discovered several email transmissions between William Charnock and Kasey Warner. At the time of the email transmissions, Mr. Charnock was still serving as Executive Director of the West Virginia Prosecuting Attorneys Institute, and Mr. Warner was the United States Attorney for the Southern District of West Virginia.

Evidence shows that during Mr. Charnock’s campaign for Kanawha County Prosecutor, Mr. Charnock and Mr. Warner discussed in a series of emails on July 28, 2003 actions that would be violations of West Virginia state election laws.¹ The emails originated from Mr. Warner in response to a campaign contribution letter from Mr. Charnock. The emails also include correspondence with Mr. Charnock’s sister Anne Charnock, who is an attorney, providing advice on the legality of anonymous contributions.

The series of emails between Mr. Charnock and the former U.S. Attorney follows. It must be noted that the times shown on the emails would make them appear to be out of sequence. **They are in fact in sequence.** The appearance of them being out of sequence is probably due to the clocks on one of the computers involved being incorrect. Appendix D shows as a single Microsoft Outlook document the complete series of back and forth emails between Mr. Charnock, Mr. Warner, and Mr. Charnock’s sister Anne. This document, along with all the emails, was on Mr. Charnock’s office computer.

The original email from Mr. Warner to Mr. Charnock asks:

“are . . . contributor names available to the public?”

¹The Government Auditing Standards, also known as *The Yellow Book*, which the Performance Evaluation and Research Division of the Legislative Auditor’s Office operates under advises the reporting of all instances of fraud and illegal acts. Specifically, 8.16 of the standards state: *The audit report should also include any significant deficiencies in internal control, all instances of fraud and illegal acts unless they are clearly inconsequential, significant violations of provisions of contracts or grant agreements, and significant abuse.*

— Original Message —

*From: <Kasey.Warner@usdoj.gov>
To: <votecharnock@votecharnock.com>
Sent: Monday, July 28, 2003 8:34 AM
Subject: Contribution Question*

Bill:

Received your letter requesting a campaign contribution. I'd like to help you however I can do so appropriately; but in the position I hold, I have to be extremely careful with anything involving politics — and DOJ is very squeamish on campaign contributions of any type (and I imagine they would be concerned about open support to any elected prosecutor). I think you realize I may also have some appearance concerns because of Booth Goodwin, from my office, probably lining up to be your Democratic opponent.

I am not aware of state and county campaign laws. Can you tell me whether contributions to your campaign are reported by name? To what office? Is there a threshold level for such reporting by name? If so, are those contributor names available to the public?

Would appreciate any explanation of the rules, and we'll figure out best how to go from there. Thanks.

Kasey

Upon receiving Mr. Warner's email, Mr. Charnock forwards it on to his sister Anne Charnock and requests her advice.

*From: William Charnock [wcharnock@state.wv.us]
Sent: Monday, July 28, 2003 8:50 AM
To: Anne Charnock (annecharnock@usa.net)
Subject: FW: Contribution Question*

Blanche: Do you know the answers to these questions?

Ms. Anne Charnock replies to Mr. Charnock that "Anonymous contributions are verboten."

—Original Message—

*From: Anne B. Charnock
[mailto:annecharnock@usa.net]
Sent: Monday, July 28, 2003 9:00 AM
To: William Charnock
Cc: Jane Charnock; Jim Smallridge
Subject: Re: [FW: Contribution Question]*

Bill-

Anonymous contributions are verbotten.

All contributions up to \$250 are reported by name. Over \$250 (up to \$1000 per election cycle) require name, address, occupation, etc.

Does this help?

Mr. Charnock then forwards his sister Anne Charnock's email on to Mr. Warner.

—Original Message—

*From: wcharnock@state.wv.us
[mailto:wcharnock@state.wv.us]
Sent: Monday, July 28, 2003 10:13 AM
To: Warner, Kasey
Cc: annecharnock@usa.net
Subject: FW: [FW: Contribution Question]*

Kasey: From my much, much, much older sister Anne, the elections law expert. Bill Charnock

Thus, Mr. Warner was clearly informed that anonymous donations could not be made. Below is the former U.S. Attorney's reply when told anonymous contributions are illegal:

—Original Message—

*From: Kasey.Warner@usdoj.gov
[mailto:Kasey.Warner@usdoj.gov]
Sent: Monday, July 28, 2003 9:34 AM
To: 'wcharnock@state.wv.us'
Subject: RE: [FW: Contribution Question]*

Bill:

I have to think and talk this through with some folks. Let me try to steer some contributions your way (gently) and perhaps use a family member with a different last name to make my contribution. And stay in touch as you need some folks to put up yard signs, etc.; I may be able to tap into some GOP youth or some close “acquaintances” who would be able to quietly assist.

Please understand that I have been closely involved in friction with Clifford and Tucker, that Booth Goodwin throws a wrench into the works (my name on your contribution list and not his could raise eyebrows in the office), and, while not a prohibition, there is a concern in DOJ with USAttys who are tied to any campaign in any way (eg, I had to have Atty General permission to attend my dad’s House of Delegate fundraiser, and then only after arguing my absence as his son would be conspicuous and damaging to him). Please understand you will not have a stronger supporter “behind the scenes”...you’ll be a great prosecutin’ atty.

Best, Kasey

The Legislative Auditor would like to emphasize Mr. Warner’s response in the first paragraph of the email:

Let me try to steer some contributions your way (gently) and perhaps use a family member with a different last name to make my contribution.

West Virginia Code §3-8-2 requires an accounting of receipts and expenditures in an election. If the subject made a real contribution to the campaign of another by providing materials, it is that candidate’s responsibility to disclose that properly, under election law. If it is made without authorization of the candidate, it has to be reported as an “independent expenditure” if it meets certain requirements under §3-8-2.

In addition, West Virginia Code §3-8-5a(h) states:

No contribution may be made, directly or indirectly, in a fictitious name, anonymously or by one person through an agent, relative or other person so as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment of the contributor’s identity. (Emphasis Added)

Also, West Virginia Code §3-8-5a(f) states:

*No person, firm, association or committee may make any contribution except from their own funds, unless such person, firm, association or committee discloses in writing to the person required to report under this section the first name, middle initial, if any, and the last name in the case of an individual, or the full name in case of a firm, association or committee, residence and mailing address and the major business affiliation and occupation of the person, firm, association or committee which furnished the funds to such contributor. **All such disclosures shall be included in the statement required by this section.** (Emphasis Added)*

No such disclosures were found in Mr. Charnock's campaign finance forms. Mr. Charnock's campaign finance forms do not list any donations by Mr. Kasey Warner. The finance forms show donations from Mr. Warner's brother, Monroe P. Warner, with donations of \$100 on March 19, 2004, and \$50 on June 2, 2004. The finance forms also list Mr. Warner's father, George Warner, with a donation of \$25 on August 9, 2004.

In addition, it should be noted that Mr. Charnock and Mr. Warner continued to discuss campaign fund-raising after the July 28, 2003 emails. There are also emails on August 20, 2003 and August 27, 2003 discussing a fundraiser for Mr. Charnock's campaign for Kanawha County Prosecutor for which Mr. Warner offers suggestions. (Almost all emails Mr. Charnock sent or received after sometime in mid-September 2003 could not be recovered from Mr. Charnock's state computer. They appeared to have been deleted.)

Given these email correspondences, the Legislative Auditor questions the accuracy of Mr. Charnock's campaign finance forms. Since Mr. Kasey Warner is not listed as contributing to Mr. Charnock's campaign, the Legislative Auditor must ask: Did he contribute anonymously as he stated he might do in the email correspondences? These correspondences clearly show a discussion relating to the possible violation of West Virginia elections laws §3-8-2a; §3-8-5(a); and §3-8-5a(h). Mr. Charnock and Mr. Warner were clearly informed by Anne Charnock that individuals could not donate anonymously, but Mr. Warner responded by stating that he may:

"...use a family member with a different last name to make my contribution."

Moreover, as attorneys, Mr. Charnock and Mr. Warner would have easy access to and understanding of the West Virginia Code. In addition, it must be noted that the Legislative Auditor did not find any correspondence from Mr. Charnock asking Mr. Warner not to carry out this violation. Thus, Mr. Charnock might be guilty of being involved in the violation of state election laws if Mr. Warner donated money illegally. Mr. Charnock's only response found on this matter is as follows:

—Original Message—

From: wcharnock@state.wv.us

[mailto:wcharnock@state.wv.us]

Sent: Monday, July 28, 2003 10:47 AM

To: Warner, Kasey

Subject: RE: [FW: Contribution Question]

Kasey: I understand completely. I realize your hands are tied and I appreciate any support you can give. I was told the other night the Democrats "are pissed" about me sending the letter - I sent it to every member of the Kanawha and Putnam bars, a list of about 500 from my family and about 1000 other historical donors/community leaders. Wasn't there a U. S. President who said, "Screw 'em!"

Anyways, votes win elections - not yard signs or advertisements. I would appreciate yours. Bill Charnock

The former U.S. Attorney then makes a final email response.

From: Kasey.Warner@usdoj.gov

Sent: Monday, July 28, 2003 10:58 AM

To: 'wcharnock@state.wv.us'

Subject: RE: [FW: Contribution Question]

You can count on the vote — and all the extended Warner Family votes. My personal involvement just needs to stay behind the scenes. If you ever need anything from the State Party, let me soften up Kris before you call, or just let me work it for you. Best, Kasey

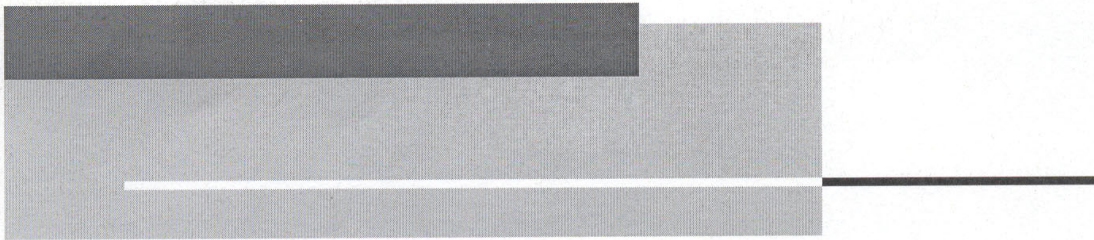
If in fact, Mr. Warner did make either a monetary donation to Mr. Charnock's campaign using a "family member with a different last name" or made in-kind contributions to Mr. Charnock's campaign which were not reported by Mr. Charnock's campaign committee, Mr. Warner and Mr. Charnock may have violated §61-10-31 of the West Virginia Code which sets forth the crime of conspiracy.

The Legislative Auditor Shared Evidence and Relevant Documents With the United States Department of Justice and the West Virginia Secretary of State's Office.

Since this matter involved a federal employee, the Legislative Auditor turned over relevant documents and evidence to the United States Department of Justice (USDOJ) on June 3, 2005. Additionally, evidence and relevant documents were given to the West Virginia Secretary of State's Office. On July 5, 2005, the USDOJ informed the Legislative Auditor that a formal investigation was being opened. Mr. Warner is no longer employed as the U.S. Attorney for the Southern District of West Virginia.

Conclusion

Email correspondences between William Charnock and Kasey Warner, the former United States Attorney for the Southern District of West Virginia, show a discussion of possibly violating state election laws. Correspondences show that Mr. Warner was forwarded a message that stated that donations could not be made anonymously. Yet, the U.S. Attorney then responds that he may use the name of another family member with a different last name to make his donation. Further, no correspondence was found from Mr. Charnock requesting that such a donation not be made. Thus, both individuals may have violated state elections laws. Finally, since Mr. Warner used his federal government email account, may have used a federal government-owned computer, and the correspondence concerning this matter with Mr. Charnock were made via electronic means, federal laws may have been violated.



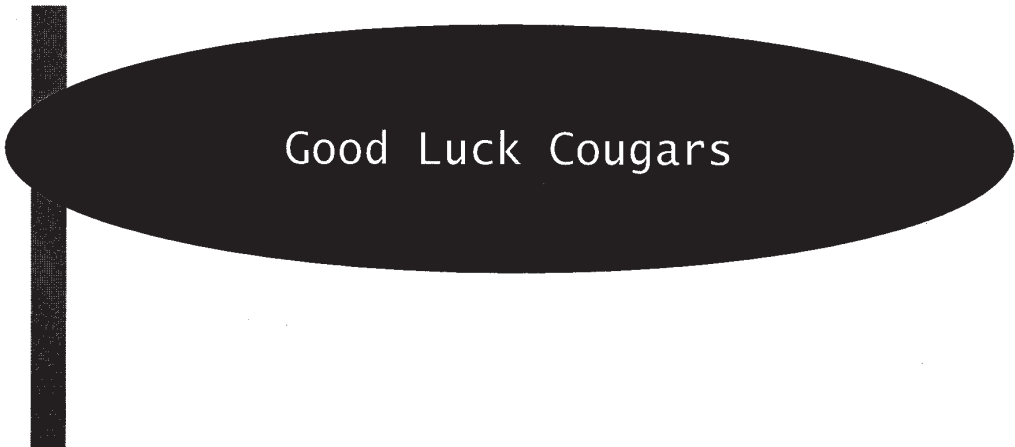
ALL THE
BEST

Compliments of

Jane Charnock

Family Court Judge
Kanawha County

Paid for by the Committee to Keep Charnock 2002, John P. Charnock, Treasurer



Good Luck Cougars

Compliments of

Jane Charnock
Kanawha County
Family Court Judge

Paid for by the Committee to Keep
Charnock 2002, John P. Charnock,
Treasurer

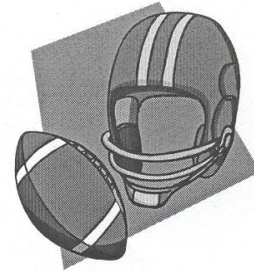
Go Nads

Compliments of

Jane Charnock

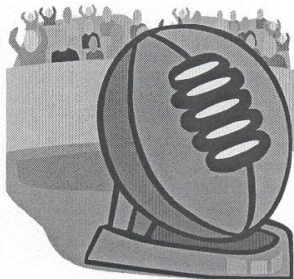
Kanawha County
Family Court
Judge

Paid for by the Committee to Keep Charnock 2002, John P. Charnock, Treasurer



**GOOD
LUCK
COUGARS**

COMPLIMENTS OF
JANE CHARNOCK
FAMILY COURT JUDGE
KANAWHA COUNTY



Paid for by Committee to Keep Charnock 2002
John P. Charnock, Treasurer



Appendix B: William Charnock Fund-raising Form Letter

Date

Name
Address 1
Address 2
City, State Zip

Dear Mr/Ms

Now more than ever Kanawha County needs a prosecutor with the energy, integrity and experience to manage one of the most important offices in government. That is why I have formed a committee and am in the process of raising money to make it possible to seek this office.

I have enclosed a short biography that tells you about my education, experience and involvement in the community. After reading this, I am sure you will realize I am more than qualified for the job. I won't require on the job training.

Campaigns are expensive. While my plan is to personally meet as many voters as possible between now and the primary election, I know that in a county this size it won't be possible. That is why I need money to buy advertising. That particular element of a campaign is the most expensive part. Television, radio and newspaper ads don't come cheap. Direct mail is also very expensive. Add to that printing costs and other expenses and the costs suddenly become too much for a candidate who isn't personally wealthy. That is why I am asking for your contribution. I am also asking for your trust and your faith in my ability to do the job.

I believe the campaign for this office is about more than politics. While I am a Republican, the people I am asking to serve come from all walks of life and from different political parties. In asking to be elected, I am also asking to be put in charge of making certain criminals go to jail and do not terrorize and victimize our people. A prosecutor can't do that without working well with every law enforcement agency in the county. I can do that. I have done that.

I know you may be asking why I am trying to raise money so early in the campaign. It is a good question. Raising money is the toughest part of running for public office. Asking people to help is one thing. Asking them to have enough faith in your ability to actually contribute hard-earned money is a real task. I wish I didn't have to do it. But, as I said, nothing in a campaign comes cheap. I have the energy to wage an aggressive race. I just do not have the personal wealth.

Please take the time to write a check today to help my campaign. You may send it to the address on this letter. Your help and your confidence will be greatly appreciated.

Sincerely,

William J. Charnock

Appendix C: William Charnock Fund-raising Invitation

Nate and Melissa Orders and Scott Kaminski and Erin Brewster request the honor of your presence at a fundraising reception for

Bill Charnock

Candidate for

Kanawha County Prosecuting Attorney

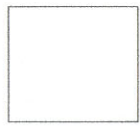
Wednesday, September 24, 2003

6:00 p.m. — 8:00 p.m.

Orders Residence
828 Chestnut Road
Charleston, WV

Make checks payable to:
Charnock in 2004
P. O. Box 20525
Charleston, WV 25362

PUBLIC EMPLOYEES PLEASE DISREGARD
PAID FOR BY CHARNOCK IN 2004, JIM SMALLRIDGE TREASURER



Charmock in 2004
P. O. Box 20525
Charleston, WV 25362



Appendix D: Warner - Charnock Email Correspondence

Unknown

From: Kasey.Warner@usdoj.gov
Sent: Monday, July 28, 2003 10:58 AM
To: 'wcharnock@state.wv.us'
Subject: RE: [FW: Contribution Question]

You can count on the vote -- and all the extended Warner Family votes. My personal involvement just needs to stay behind the scenes. If you ever need anything from the State Party, let me soften up Kris before you call, or just let me work it for you.
Best, Kasey

-----Original Message-----

From: wcharnock@state.wv.us [mailto:wcharnock@state.wv.us]
Sent: Monday, July 28, 2003 10:47 AM
To: Warner, Kasey
Subject: RE: [FW: Contribution Question]

Kasey: I understand completely. I realize your hands are tied and I appreciate any support you can give. I was told the other night the Democrats "are pissed" about me sending the letter - I sent it to every member of the Kanawha and Putnam bars, a list of about 500 from my family and about 1000 other historical donors/community leaders. Wasn't there a U. S. President who said, "Screw 'em!"

Anyways, votes win elections - not yard signs or advertisements. I would appreciate yours. Bill Charnock

-----Original Message-----

From: Kasey.Warner@usdoj.gov [mailto:Kasey.Warner@usdoj.gov]
Sent: Monday, July 28, 2003 9:34 AM
To: 'wcharnock@state.wv.us'
Subject: RE: [FW: Contribution Question]

Bill:

I have to think and talk this through with some folks. Let me try to steer some contributions your way (gently) and perhaps use a family member with a different last name to make my contribution. And stay in touch as you need some folks to put up yard signs, etc.; I may be able to tap into some GOP youth or some close "acquaintances" who would be able to quietly assist.

Please understand that I have been closely involved in friction with Clifford and Tucker, that Booth Goodwin throws a wrench into the works (my name on your contribution list and not his could raise eyebrows in the office), and, while not a prohibition, there is a concern in DOJ with USAttys who are tied to any campaign in any way (eg, I had to have Atty General permission to attend my dad's House of Delegate fundraiser, and then only after arguing my absence as his son would be conspicuous and damaging to him). Please understand you will not have a stronger supporter "behind the scenes"...you'll be a great prosecutin' atty.

Best, Kasey

-----Original Message-----

From: wcharnock@state.wv.us [mailto:wcharnock@state.wv.us]
Sent: Monday, July 28, 2003 10:13 AM
To: Warner, Kasey
Cc: annecharnock@usa.net
Subject: FW: [FW: Contribution Question]

Kasey: From my much, much, much older sister Anne, the elections law expert. Bill Charnock

-----Original Message-----

From: Anne B. Charnock [mailto:annecharnock@usa.net]
Sent: Monday, July 28, 2003 9:00 AM
To: William Charnock
Cc: Jane Charnock; Jim Smallridge
Subject: Re: [FW: Contribution Question]

Bill-

Anonymous contributions are verboten.

All contributions up to \$250 are reported by name. Over \$250 (up to \$1000 per election cycle) require name, address, occupation, etc.

Does this help?

"William Charnock" <wcharnock@state.wv.us> wrote:

Blanche: Do you know the answers to these questions?

-----Original Message-----

From: Jane Charnock [mailto:jane@charnock.tc]
Sent: Wednesday, July 23, 2003 9:30 AM
To: William Charnock
Cc: wcharnock@charter.net; Anne B.Charnock
Subject: Fw: Contribution Question

----- Original Message -----

From: <Kasey.Warner@usdoj.gov>
To: <votecharnock@votecharnock.com>
Sent: Monday, July 28, 2003 8:34 AM
Subject: Contribution Question

> Bill:

>

> Received your letter requesting a campaign contribution. I'd like to
> help

you however I can do so appropriately; but in the position I hold, I have to be extremely careful with anything involving politics -- and DOJ is very squeamish on campaign contributions of any type (and I imagine they would be concerned about open support to any elected prosecutor). I think you realize I may also have some appearance concerns because of Booth Goodwin, from my office, probably lining up to be your Democratic opponent.

>

> I am not aware of state and county campaign laws. Can you tell me
> whether

contributions to your campaign are reported by name? To what office? Is there a threshold level for such reporting by name? If so, are those contributor names available to the public?

>

> Would appreciate any explanation of the rules, and we'll figure out
> best

how to go from there. Thanks.

>

> Kasey

Appendix E: Sections of West Virginia Code

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

(a) Except candidates for party committeemen and committeewomen, in primary and other elections and federal committees required to file under the provisions 2 U.S.C. §434, all candidates for nomination or election and all persons or organizations of any kind advocating or opposing a nomination, election or defeat of any candidate shall keep records of receipts and expenditures which are made for political purposes. All of the receipts and expenditures are subject to regulation by the provisions of this article. Verified financial statements of the records and expenditures shall be made and filed as public records by all candidates and by their financial agents, representatives or any person acting for and on behalf of any candidate and by the treasurers of all political party committees.

(b) In addition to any other reporting required by the provisions of this chapter, any independent expenditure in the amount of one thousand dollars or more for any statewide, legislative or multicounty judicial candidate or in the amount of five hundred dollars or more for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, any municipal candidate on a municipal election ballot, which is made after the eleventh day but more than twelve hours before the day of any election shall be reported, on a form prescribed by the secretary of state, within twenty-four hours after the expenditure is made or debt is incurred for a communication, to the secretary of state by hand-delivery, facsimile or other means to assure receipt by the secretary of state within the 24-hour period.

(c) For purposes of this section, “independent expenditure” means an expenditure made by a person other than a candidate or committee for a communication which expressly advocates the election or defeat of a clearly identified candidate but which is made independently of a candidate’s campaign and which has not been made with the cooperation or consent of, or in consultation with, or at the request or suggestion of, any candidate or any of his or her agents or authorized committees. An expenditure which does not meet the criteria for independence established in this subsection is considered a contribution.

(d) Any independent expenditure must include a clear and conspicuous public notice which identifies the name of the person who paid for the expenditure and states that the communication is not authorized by the candidate or his or her committee.

§3-8-5. Detailed accounts and verified financial statements required.

(a) Every candidate, financial agent, person and association of persons, organization of any kind, including every corporation, directly or indirectly, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection (b), section eight of this article or engaging in other activities permitted by this section and also including the treasurer or equivalent officer of the association or organization, advocating or opposing the nomination, election or defeat of any candidate, and the treasurer of every political party committee shall keep detailed accounts of every sum of money or other thing of value received by him or her, including all loans of money or things of value, and of all expenditures and disbursements made, liabilities incurred, by the candidate, financial agent, person, association or organization or committee, for political purposes, or by any of the officers or members of the committee, or any person acting under its authority or on its behalf.

(b) Every person or association of persons required to keep detailed accounts under this section shall file with the officers hereinafter prescribed a detailed itemized sworn statement, according to the following provisions and times:

(1) On the last Saturday in March or within six days thereafter, and annually whenever the total of all financial transactions relating to an election exceed five hundred dollars a statement which shall include all financial transactions which have taken place by the date of that statement, subsequent to any previous statement filed within the previous five years under this section;

(2) Not less than ten nor more than seventeen days preceding each primary or other election, a statement which shall include all financial transactions which have taken place by the date of the statement, subsequent to the previous statement, if any;

(3) Not less than twenty-five nor more than thirty-one days after each primary or other election, a statement which shall include all financial transactions which have taken place by the date of the statement, subsequent to the previous statement; and

(4) On the first Saturday in September or within six days thereafter, preceding the general election day whenever the total of all financial transactions relating to an election exceed five hundred dollars or whenever any loans are outstanding, a statement which shall include all financial transactions which have taken place by the date of the statement, subsequent to the previous statement.

(c) Every person who shall announce as a write-in candidate for any elective office and his or her financial agent or election organization of any kind shall comply with all of the requirements of this section after public announcement of the person's candidacy has been made.

(d) For purposes of this section, the term "financial transactions" includes all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election or defeat of any candidate to be voted on.

§3-8-5a. Information required in financial statement.

(a) Each financial statement required by the provisions of this article shall contain only the following information:

(1) The first name, middle initial, if any, and last name, residence and mailing address and telephone number of each candidate, financial agent, treasurer or person, and the full name, address and telephone number of each association, organization or committee filing a financial statement.

(2) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.

(3) The first name, middle initial, if any, and the last name in the case of an individual, and the full name of each firm, association or committee, and the amount of such contribution of such individual, firm, association or committee, and, if the aggregate of the sum or sums contributed by any one such individual, firm, association or committee exceeds two hundred fifty dollars, there shall also be reported the residence and mailing address and, in the case of an individual, the major business affiliation and occupation. A contribution totaling more than fifty dollars of currency of the United States or currency of any foreign country by any one contributor is prohibited and a violation of this provision is subject to section five-d of this article. The report on which contributions required by this subdivision shall not distinguish between contributions made by individuals and contributions made by firms, associations or committees.

(4) The total amount of contributions received during the period covered by the financial statement.

(5) The first name, middle initial, if any, and the last name, residence and mailing address of any individual or the full name and mailing address of each lending institution making a loan or of the spouse cosigning a loan, as appropriate, the amount of any loan received, the date and terms of the loan, including the interest and repayment schedule, and a copy of the loan agreement.

(6) The first name, middle initial, if any, and the last name, residence and mailing address of any individual or the full name and mailing address of each firm, association or committee having previously made or cosigned a loan for which payment is made or a balance is outstanding at the end of the period, together with the amount of repayment on the loan made during the period and the balance at the end of the period.

(7) The total outstanding balance of all loans at the end of the period.

(8) The first name, middle initial, if any, and the last name, residence and mailing address of any individual, or the full name and mailing address of each firm, association or committee to whom each expenditure was made or liability incurred, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

(9) The total expenditure for the nomination, election or defeat of a candidate or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, in whose behalf an expenditure was made or a contribution was given for the primary or other election.

(10) The total amount of expenditures made during the period covered by the financial statement.

(b) Any unexpended balance at the time of making the financial statements herein provided for shall be properly accounted for in that financial statement and shall appear as a balance in the next following financial statement.

(c) Each financial statement required by this section shall contain a separate section setting forth the following information for each fund-raising event held during the period covered by the financial statement:

(1) The type of event, date held, and address and name, if any, of the place where the event was held.

(2) All of the information required by subdivision (3), subsection (a) of this section.

(3) The total of all moneys received at the fund-raising event.

-
- (4) The expenditures incident to the fund-raising event.
- (5) The net receipts of the fund-raising event.
- (d) When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required in this section, such lump sum expenditures shall be accounted for in the same manner as provided for herein.
- (e) Any contribution or expenditure made by or on behalf of a candidate for public office, to any other candidate, or committee for a candidate for any public office in the same election shall be accounted for in accordance with the provisions of this section.
- (f) No person, firm, association or committee may make any contribution except from their own funds, unless such person, firm, association or committee discloses in writing to the person required to report under this section the first name, middle initial, if any, and the last name in the case of an individual, or the full name in case of a firm, association or committee, residence and mailing address and the major business affiliation and occupation of the person, firm, association or committee which furnished the funds to such contributor. All such disclosures shall be included in the statement required by this section.
- (g) Any firm, association, committee or fund permitted by section eight of this article to be a political committee shall disclose on the financial statement its corporate or other affiliation.
- (h) No contribution may be made, directly or indirectly, in a fictitious name, anonymously or by one person through an agent, relative or other person so as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment of the contributor's identity.
- (i) No person, firm, association or committee may accept any contribution for the purpose of influencing the nomination, election or defeat of a candidate or for the passage or defeat of any issue or thing to be voted upon unless the identity of the donor and the amount of the contribution is known and reported.
- (j) When any candidate, organization, committee or person receives any anonymous contribution which cannot be returned because the donor cannot be identified, that contribution shall be donated to the general revenue fund of the state. Any anonymous contribution shall be recorded as such on the candidate's financial statement, but may not be expended for election expenses. At the time of filing, the financial statement shall include a statement of distribution of anonymous contributions, which total amount shall equal the total of all anonymous contributions received during the period.
- (k) Any membership organization which raises funds for political purposes by payroll deduction assessing them as part of its membership dues or as a separate assessment may report the amount raised as follows:
- (1) If the portion of dues or assessments designated for political purposes equals twenty-five dollars or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments during the period is reported by showing the amount required to be paid by each member and the number of members.
 - (2) If the total payroll deduction for political purposes of each participating member equals twenty-five dollars or less over the course of a calendar or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes through such payroll deductions during the reporting period, and to the maximum extent possible, the amount of each yearly payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall maintain records of the name and yearly payroll deduction amounts of each participating member.
 - (3) If any member contributes to the membership organization through individual voluntary contributions by means other than payroll deduction, membership dues, or assessments as provided in this subsection, the reporting requirements of subdivision (3), subsection (a) of this section shall apply. Funds raised for

political purposes must be segregated from the funds for other purposes and listed in its report.

(l) For purposes of this section:

(1) “Political purposes” means advocating or opposing the nomination, election or defeat of one or more candidates, supporting the retirement of the debt of a candidate or activities of an established political party or an organization which has declared itself a political party, supporting the administration or activities of a political committee or advocating or opposing the passage of a ballot issue.

(2) “Membership organization” means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors, and the ability to hold office, to its members, and which uses a majority of its membership dues for purposes other than political purposes. This term shall not include organizations that grant membership upon receiving a contribution.

(3) “Fund-raising event” means an event such as a dinner, reception, testimonial, cocktail party, auction or similar affair through which contributions are solicited or received by such means as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services.

(m) Notwithstanding the provisions of section five of this article or of the provisions of this section to the contrary, an alternative reporting procedure may be followed by a political party executive committee or a political action committee representing a political party in filing financial reports for fund-raising events if the total profit does not exceed five thousand dollars per year. A political party executive committee or a political action committee representing a political party may report gross receipts for the sale of food, beverages, services, novelty items, raffle tickets or memorabilia, except that any receipt of more than fifty dollars from an individual or organization shall be reported as a contribution. A political party executive committee or a political action committee representing a political party using this alternative method of reporting shall report: (i) The name of the committee; (ii) the type of fund-raising activity undertaken; (iii) the location where the activity occurred; (iv) the date of the fund raiser; (v) the name of any individual who contributed more than fifty dollars worth of items to be sold; (vi) the name and amount received from any person or organization purchasing more than fifty dollars worth of food, beverages, services, novelty items, raffle tickets or memorabilia; (vii) the gross receipts of the fund raiser; and (viii) the date, amount, purpose and name and address of each person or organization from whom items with a fair market value of more than fifty dollars were purchased for resale.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) Persons subject to section. — The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

(b) Use of public office for private gain. — (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) The Legislature, in enacting this subsection (b), relating to the use of public office or public employment for private gain, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Such persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by such persons may have its own inherent prestige, it would be unfair to such individuals and against the best interests of the citizens of this state to deny such persons the right to hold public office or be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of such public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within such categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Such exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(c) Gifts. — (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee: Provided, however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when: (1) That official is a part-time elected public official; (2) the fee is not related to the official's public position or duties; (3) the fee is for services provided by the public official that are related to the public official's regular, nonpublic trade, profession, occupation, hobby or avocation; and (4) the honorarium is not provided in exchange for any promise or action on the part of the public official.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The governor or his designee may, in the name of the state of West Virginia, accept and receive gifts from any public or private source. Any such gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the division of culture and history.

(6) Upon prior approval of the joint committee on government and finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the joint committee on government and finance authorizes payment of dues or other membership fees for the Legislature's participation, and which assist this and other state legislatures and their staff through any of the following:

(i) Advancing the effectiveness, independence, and integrity of legislatures in the states of the United States;

(ii) Fostering interstate cooperation and facilitating information exchange among state legislatures;

(iii) Representing the states and their legislatures in the American federal system of government;

(iv) Improving the operations and management of state legislatures and the effectiveness of legislators and legislative staff, and to encourage the practice of high standards of conduct by legislators and legislative staff;

(v) Promoting cooperation between state legislatures in the United States and legislatures in other

countries. The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the Legislature may not be used by the legislative member in conjunction with the fund raising or solicitation effort. The legislative organization for which solicitations are being made shall file with the joint committee on government and finance and with the secretary of state for publication in the state register as provided in article two of chapter twenty-nine-a of the code, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a legislative member shall contain the following disclaimer:

“This solicitation is endorsed by [name of member]. This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A copy of all solicitations are on file with the West Virginia Legislature’s Joint Committee on Government and Finance, and with the Secretary of State, and are available for public review.”

(d) Interests in public contracts. — (1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this subsection is:

(A) An interest:

(i) Not exceeding ten percent of the partnership or the outstanding shares of a corporation; or

(ii) Not exceeding thirty thousand dollars interest in the profits or benefits of the contract; or

(B) An interest as a creditor:

(i) Not exceeding ten percent of the total indebtedness of a business; or

(ii) Not exceeding thirty thousand dollars interest in the profits or benefits of the contract.

(3) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) Confidential information. — No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) Prohibited representation. — No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client's interests are materially adverse to the interests of the government agency, without the consent of the government agency: Provided, That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which such professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on the first day of July, one thousand nine hundred eighty-nine, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

(g) Limitation on practice before a board, agency, commission or department. — (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of six months after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate regulations, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;

(B) To support or oppose a proposed regulation;

(C) To support or contest the issuance or denial of a license or permit;

(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: Provided, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist, or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within six months after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state, or of county or municipal governments including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely

affected by the provisions of this subsection may apply to the ethics commission for an exemption from the six months prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) Employment by regulated persons. — (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to sell or lease real or personal property to any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency to which he or she is working or a subordinate is known by him or her to be working.

(2) Within the meaning of this section, the term "employment" includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; "seek employment" includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and "subordinate" includes only those agency personnel over whom the public servant has supervisory responsibility.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the ethics commission for an exemption from the prohibition contained in subsection (1). The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(i) Members of the Legislature required to vote. — Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

(j) Limitations on participation in licensing and rate-making proceedings. — No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation or association in which the public official or employee or his or her immediate family owns or controls more than ten percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than ten percent, has sold goods or services totaling

more than one thousand dollars during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency's proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to articles three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

(k) Certain expenses prohibited. — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(l) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of such institution or has been approved by the employees' department supervisor or the president of the institution by which the faculty or staff member is employed.

(m) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(n) The commission by legislative rule promulgated in accordance with chapter twenty-nine-a of this code may define further exemptions from this section as necessary or appropriate.

§61-3-20. Embezzlement.

If any officer, agent, clerk or servant of this state, or of any county, district, school district or municipal corporation, or of any banking institution, or other corporation, or any officer of public trust in this state, or any agent, clerk or servant of any firm or person, or company or association of persons not incorporated, embezzles or fraudulently converts to his own use, bullion, money, bank notes, drafts, security for money, or any effects or property of any other person, which shall have come into his possession, or been placed under his care or management, by virtue of his office, place or employment, he shall be guilty of the larceny thereof. If such guilty person be an officer, agent, clerk or servant of any banking institution, he shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten years. And it shall not be necessary to describe in the indictment, or to identify upon the trial, the particular bullion, money, bank note, draft or security for money which is so taken, converted to his own use or embezzled by him.

And whenever any officer, agent, clerk or servant of this state, or of any county, district, school district or municipal corporation, shall appropriate or use for his own benefit, or for the benefit of any other person, any bullion, money, bank notes, drafts, security for money or funds belonging to this state or to any such county, district, school district or municipal corporation, he shall be held to have embezzled the same and be guilty of the larceny thereof. In the prosecution of any such officer, agent, clerk or servant of this state or of any county, district, school district or municipal corporation charged with appropriation or use for his own benefit or the benefit of any other person, any bullion, money, bank notes, drafts, security for money or funds belonging to this state or to any county, district, school district or municipal corporation, it shall not be necessary to describe in the indictment, or to identify upon the trial, the particular bullion, money, bank notes, drafts, security for money or funds appropriated or used for his own benefit or for the benefit of any other person.

§61-3-22. Falsifying accounts; penalty.

If any officer, clerk or agent of this state, or of any county, district, school district or municipal corporation thereof, or of any banking institution or incorporated company, or any clerk or agent of any firm or person or association of persons not incorporated, make, alter or omit to make any entry in any book of account of, or in any account kept by such state, county, district, school district, municipal corporation, banking institution, incorporated company, firm or person, or association of persons, or mutilate, destroy or conceal any such account or book of accounts, with intent in so doing to conceal, the true state of any account, or to defraud the state or any county, district, school district, municipal corporation, banking institution, company, firm or person, or with intent to enable or assist any person to obtain money to which he was not entitled, such officer, clerk or agent shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years.

§61-3-24. Obtaining money, property and services by false pretenses; disposing of property to defraud creditors; penalties.

(a) (1) If a person obtains from another by any false pretense, token or representation, with intent to defraud, any money, goods or other property which may be the subject of larceny; or

(2) If a person obtains on credit from another any money, goods or other property which may be the subject of larceny, by representing that there is money due him or her or to become due him or her, and assigns the claim for such money, in writing, to the person from whom he or she obtains such money, goods or other property, and afterwards collects the money due or to become due, without the consent of the assignee, and with the intent to defraud;

(3) Such person is guilty of larceny. If the value of the money, goods or other property is one thousand dollars or more, such person is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and be fined not more than two thousand five hundred dollars. If the value of the money, goods or other property is less than one thousand dollars, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than two thousand five hundred dollars, or both.

(b) If a person obtains by any false pretense, token or representation, with intent to defraud, the signature of another to a writing, the false making of which would be forgery, the person is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than five years, or, in the discretion of the court, be confined in jail not more than one year and fined not more than two thousand five hundred dollars.

(c) (1) If a person removes any of his or her property out of any county with the intent to prevent the same from being levied upon by any execution; or

(2) If a person secretes, assigns or conveys, or otherwise disposes of any of his or her property with the intent to defraud any creditor or to prevent the property from being made liable for payment of debts; or

(3) If a person receives the property of another with the intent to defraud any creditor or to prevent the property from being made liable for the payment of debts;

(4) The person is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand five hundred dollars and be confined in jail not more than one year.

(d) If a person, firm or corporation obtains labor, services or any other such thing of value from another by any false pretense, token or representation, with intent to defraud, the person, firm or corporation is guilty of theft of services. If the value of the labor, services or any other such thing of value is one thousand dollars or more, the person, firm or corporation is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and be fined not more than two thousand five hundred dollars. If the value of the labor, services or any other such thing of value is less than one thousand dollars, the person, firm or corporation is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than two thousand five hundred dollars, or both, in the discretion of the court.

(e) Theft of services includes the obtaining of a stop payment order on a check, draft or order for payment of money owed for services performed in good faith and in substantial compliance with a written or oral contract for services, with the fraudulent intent to permanently deprive the provider of such labor, services or other such thing of value of the payment represented by such check, draft or order. Notwithstanding the penalties set forth elsewhere in this section, any person, firm or corporation violating the provisions of this

subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two times the face value of the check, draft or order.

(f) Prosecution for an offense under this section does not bar or otherwise affect adversely any right or liability to damages, forfeiture or other civil remedy arising from any or all elements of the criminal offense.

§61-3-24d. Fraudulent schemes; cumulation of amounts where common scheme exists; penalties.

(a) Any person who willfully deprives another of any money, goods, property or services by means of fraudulent pretenses, representations or promises shall be guilty of the larceny thereof.

(b) In determining the value of the money, goods, property or services referred to in subsection (a) of this section, it shall be permissible to cumulate amounts or values where such money, goods, property or services were fraudulently obtained as part of a common scheme or plan.

(c) A violation of law may be prosecuted under this section notwithstanding any other provision of this code.

§61-10-31. Conspiracy; construction of section; penalties.

It shall be unlawful for two or more persons to conspire (1) to commit any offense against the state or (2) to defraud the state, the state or any county board of education, or any county or municipality of the state, if, in either case, one or more of such persons does any act to effect the object of the conspiracy.

Nothing in this section shall be construed to supersede, limit, repeal or affect the provisions of section eight, article nine, chapter three; section two, article one, chapter five; section thirty-eight, article three, chapter five-a; section seven, article seven, chapter twenty; section sixteen, article six, chapter sixty; sections seven, eight, nine and ten, article six, chapter sixty-one; or section one, article eight, chapter sixty-two; all of this code. It shall not be a defense to any prosecution under this section thirty-one that the conduct charged or proven is also a crime under any other provision or provisions of this code or the common law.

Any person who violates the provisions of this section by conspiring to commit an offense against the state which is a felony, or by conspiring to defraud the state, the state or any county board of education, or any county or municipality of the state, shall be guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one nor more than five years or by a fine of not more than ten thousand dollars, or, in the discretion of the court, by both such imprisonment and fine.

Any person who violates the provisions of this section by conspiring to commit an offense against the state which is a misdemeanor shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by confinement in the county jail for not more than one year or by a fine of not more than one thousand dollars, or, in the discretion of the court, by both such confinement and fine.

Appendix F: William Charnock Form Letter

October 1, 2003

Eric D. Burnett
725 Jefferson Road
South Charleston, WV 25309

Dear Law Enforcement Officer:

Now more than ever Kanawha County needs a prosecutor with the energy, integrity and experience to manage one of the most important offices in government. That is why I have formed a committee and am in the process of making it possible to seek this office.

I have enclosed a short biography that tells you about my education, experience and involvement in the community. After reading this, I am sure you will realize I am more than qualified for the job. I won't require on the job training.

While my plan is to personally meet as many voters as possible between now and the primary election, I know that in a county this size it won't be possible. That is why I am asking for your support. I am also asking for your trust and your faith in my ability to do the job.

I believe the campaign for this office is about more than politics. While I am a Republican, the people I am asking to serve come from all walks of life and from different political parties. In asking to be elected, I am also asking to be put in charge of making sure that criminals go to jail and making certain they do not terrorize and victimize our people. A prosecutor cannot do that without working well with every law enforcement agency in the county. I can do that. I have done that.

I am committed to maintaining a close working relationship with all law enforcement agencies within Kanawha County. I will hold quarterly Chiefs and Directors' meetings where each agency in the county will be invited to meet with me to discuss issues of mutual concern.

Finally, I feel strongly that the prosecuting attorney, as chief law enforcement officer in the county, should provide law enforcement training free of charge to every officer in the jurisdiction. The prosecutor has an obligation to keep the officers in the county updated on the ever changing body of criminal law. I have done that. I will do that.

Your help and your confidence will be greatly appreciated.

Sincerely,

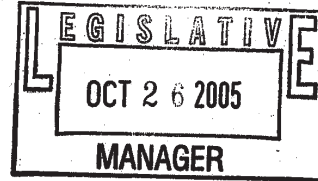
William J. Charnock

Appendix G: Secretary of State Letter



OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland
Secretary of State



October 26, 2005

Aaron Allred
Legislative Auditor
Building 1 Room W-314
State Capitol Complex
Charleston, WV 25305

Aaron
Dear Mr. Allred:

Thank you for your cooperation with the concerns you brought to us regarding William Charnock.

Our office will continue to address issues for which we have jurisdiction, but we wish to take this opportunity to suggest that, if you have not already, you contact the West Virginia Ethics Commission and the West Virginia State Auditor's Office concerning certain issues in this case.

We believe that certain items contained in the information you provided us may fall under the aforementioned offices' jurisdiction. Please inform these offices that if subpoenaed, our office will provide to them any pertinent materials gathered to this point.

Once again, we wish to express our sincere appreciation for your continued assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Daniel E. Kimble".

Daniel E. Kimble
Counsel

cc: The Honorable Robert Kiss
The Honorable Earl Ray Tomblin

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

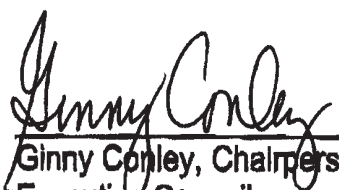
Telephone: 304-558-6000 • Toll Free: 866-SOS-VOTE • Corporations: 304-558-8000 • Fax: 304-558-0900 • www.wvsos.com

Appendix H: Computer Authorization Form

I, Ginny Conley, Chairperson, Executive Council of the West Virginia Prosecuting Attorneys Institute authorize the Legislative Auditor and his authorized employees, as part of the continuing performance audit of the Institute, to examine all data contained on the notebook computer previously used by former Executive Director, William Charnock.

The examination may include:

1. Any or all data contained on the notebook computer's hard disk drive or other storage media, whether in files, tables, other data structures or unallocated space;
2. Regenerating data that has been deleted;
3. The removal of the notebook computer and/or other data storage devices from their present location at the offices of the West Virginia Prosecuting Attorneys Institute; and
4. Reproduction and examination of a duplicate hard disk drive or analysis files which contain all the data on the notebook computer's hard disk drive, the duplicates, files and data becoming the sole property of the Legislative Auditor.



Ginny Conley, Chairperson
Executive Council

West Virginia Prosecuting Attorneys Institute

2/28/05
Date

I, Denny Rhodes, an authorized employee of the Legislative Auditor acknowledge that I have received the notebook computer. I am authorized to represent that the Legislative Auditor assumes responsibility for the notebook computer while in possession of the Legislative Auditor and his authorized employees.



Denny Rhodes, Research Manager
Performance Evaluation and Research Division

3/2/05
Date

Appendix I: Agency Response

RESPONSE TO LEGISLATIVE AUDITOR'S REPORT DATED NOVEMBER 9, 2005 (final draft received via e-mail November 11, 2005 8:23pm) Date submitted: November 12, 2005

The West Virginia Prosecuting Attorney's Institute (WVPAI) has cooperated with the Legislative Auditor's office since the initial audit began over one year ago. This most recent report confirms the continued cooperation of the WVPAI.

Serious issues have been raised in this ongoing legislative audit. As noted in prior audits, the WVPAI has worked successfully to move forward and away from the issues raised in the legislative audits over the past year. Outlined below are the steps taken by the Executive Council of the WVPAI to address the issues noted in this most recent report.

1. The November 9, 2005 Report raises issues previously addressed by the WVPAI Executive Council in December 2004 when the decision was made to hire a new Executive Director to replace Mr. Charnock. From the time the Executive Council decided to hire the current Executive Director it has been understood and recently formally adopted by the WVPAI Executive Council, that the Executive Director of the WVPAI is not permitted to seek political office.

2. As specifically noted in the November 9, 2005 report on pages 30 and 31, in January 2004, the WVPAI Executive Council members established guidelines for Mr. Charnock, a licensed practicing attorney, from the beginning of his campaign for Kanawha County Prosecuting Attorney. Specifically the WVPAI Executive Council minutes reflect:

guidelines were established to include a prohibition of electioneering at the office and to prohibit campaigning by Institute staff.

3. As noted on page 31 of the November 9, 2005 Report, when the Executive Council learned that Mr. Charnock had violated the terms set out by the Executive Council, he was reprimanded and informed if he engaged in similar conduct, he could face termination. No further conduct was discovered until the auditors sought the forensic analysis and review of the computer assigned to Mr. Charnock. When this forensic analysis occurred, Mr. Charnock was no longer employed by the WVPAI.

As noted on page 32 of the November 9, 2005 Report, the issues raised have been forwarded to the respective agencies for further investigation and review. The WVPAI will continue to cooperate with these agencies if requested. Furthermore, if a decision is made to request a Special Prosecuting Attorney through the Circuit Court, upon entry of the court Order, the WVPAI will promptly

assign Prosecuting Attorney(s) to facilitate the completion of the investigation and determine what, if any, further action should be taken.

Ginny Conley

Chairperson of the Executive Council of
the West Virginia Prosecuting Attorneys
Institute