

Pursuant to Chapter 4, Section 2, Article 5 of the West Virginia Code, the Commission on Special Investigations presents the Twenty-sixth Annual Report to the West Virginia Legislature. This Report covers the Commission's activities from July 1, 2005 through June 30, 2006.

I. Commission Members and Staff

The Commission on Special Investigations is comprised of ten Legislators: Five Senators and five Delegates. The following Legislators represent the membership of the Commission on Special Investigations as of June 30, 2006:

<u>Senate</u>	<u>Appointed to Commission</u>
Earl Ray Tomblin - D (Co-Chairman)	1995
H. Truman Chafin - D	1999
Donna Boley - R	2001
William R. Sharpe – D	1997
Vic Sprouse - R	1998

<u>House</u>	<u>Appointed to Commission</u>
Robert S. Kiss - D (Co-Chairman)	1998
Greg Howard - R	2005
Harold Michael - D	2001
Richard W. Staton - D	1998
Charles S. Trump IV - R	1993

These Legislators are responsible for overseeing the Commission's activities, which are discussed at length during Legislative Interim meetings held throughout the year. A quorum, which consists of a majority of the total authorized membership of the Commission, is necessary for the Commission to open or close an investigation or refer the matter to the appropriate committee if the subject does not fall under the Commission's purview.

Staff members of the Commission on Special Investigations as of June 30, 2006:

<u>Staff Member</u>	<u>Title</u>
Gary W. Slater	Director
Douglas B. Atkinson	Assistant Director
Charles R. Bedwell	Investigator
Herbert R. Cogar	Investigator
Roy M. Hutchison II	Investigator
James S. Powers	Investigator
Steven E. Staton	Investigator
Lisa M. Wilkinson	Secretary/Investigative Aide

II. Special Appreciation

During the investigative process, individuals in both the private and public sector provided information to Commission members and/or staff members. It would be difficult for the Commission on Special Investigations to perform its duties without the assistance these individuals provide.

Various County Prosecuting Attorneys, United States Attorneys and Assistant United States Attorneys have contributed their time and the resources of their offices in prosecuting individuals who have committed the felonies and misdemeanors evidenced by investigative activities reported on by this Commission. The assistance these offices provide is invaluable in the pursuance of justice.

III. Activities of the Commission (July 1, 2005 through June 30, 2006)

During the course of this fiscal year, the Commission on Special Investigations opened 12 investigative files and closed 22 investigations. As of June 30, 2006, there were 60 active investigations. The Commission met 10 times between July 1, 2005 and June 30, 2006. During these meetings the Commission staff apprised members of the alleged wrongdoing by agencies, individuals and/or firms conducting business with the State of West Virginia. Commission members also reported matters presented to them by their constituents, State employees, other legislative commissions, committees and fellow legislators.

Various allegations and investigative matters were reported and discussed during these meetings. Approval by a majority vote of the members present was obtained as needed to open, close or refer the matter(s) to prosecutors and/or other authorities.

Among the matters presented were the following:

Wyoming County Commission on Aging

In April 2002, the Commission on Special Investigations received information that Robert Graham, Director of the Wyoming County Commission on Aging, was misusing monies of the agency by using or converting it for his own gain.

In January 2003, Federal Grand Jury subpoenas were served in connection to this case.

In January 2004, the Internal Revenue Service CID became involved in the case.

In January 2006, Graham was indicted by a Federal Grand Jury in a 21-count indictment.

March 2006, Kanawha County Circuit Court enters injunction order for Graham to return vehicles and equipment to the Wyoming County Council on Aging and for Graham to not receive any further pay.

June 2006, Federal Grand Jury issues superceding indictment charging Graham with 18 additional counts.

Department of Education

Continuing an investigation that began in May 2002, Commission investigators, joined by agents of the IRS and FBI, participated in a Federal Grand Jury investigation of public corruption related to the 2001 flooding of Wyoming and McDowell Counties. The investigation disclosed a wide range of criminal violations by former Assistant Superintendent of Schools Glenn Allen McClung and Charleston businessman Phillip K. "Pork Chop" Booth. McClung, in exchange for directing State business to Booth, received numerous kickbacks, including cash and gifts.

On February 28, 2005, Booth entered a plea of guilty to one count of Wire Fraud and one count of Engaging in an Illegal Monetary Transaction in the U. S. District Court in Charleston.

On May 23, 2005, McClung entered a plea of guilty to the offenses of Extortion and Filing a False Federal Income Tax Return.

The court scheduled a sentencing hearing for both defendants in August 2005. Booth died of an apparent heart attack on June 19, 2005.

On August 29, 2005, Assistant State Superintendent of Schools G. A. McClung appeared before US District Judge Joseph R. Goodwin where he was sentenced to a period of 84 months (7 years) in prison for the offenses of extortion and filing a false federal income tax return.

McClung was also ordered, as a special condition of a period of three years' supervised release after serving his prison sentence, to pay restitution in the amount of \$68,000 to McDowell County schools and \$37,500 to the State School Building Authority. The court's order requires him to begin restitution payments in the amount of \$2,900 a month thirty days after his release from prison. Though not part of the sentencing order, McClung has a federal income tax liability of \$40,000, less interest and penalties.

Division of Highways (Special Permit Section)

Allegations of Division of Highways' employees soliciting and accepting bribes were received by the Commission during the summer of 2003. It was alleged that three employees of the District I Special Permit Section were actively soliciting bribes in exchange for the issuance of permits for oversize and overweight loads that should not have been issued. Permits were allegedly issued for loads that potentially damaged roads and bridges, and jeopardized highway safety. District I was the only District office that was authorized to issue permits through an automated system. All other District offices use a paper permitting process.

Subsequent interviews established that the District I employees had in fact solicited numerous gifts and gratuities from two major Charleston area crane rental companies, All Crane Rental and Maxim Crane Works. These companies had provided to the Highways employees' gift certificates, clothing and concert tickets valued at several hundred dollars in exchange for what they believed to be preferential treatment.

In addition meals were provided to the Highways workers by allowing them to charge numerous lunches and dinners on one company's VISA card.

Also confirmed by the Commission investigation was the fact that improper and dangerous loads had indeed been routinely permitted by the District I employees who could override the automated system when it identified a problem load. It was however, determined that the improper permitting was the result of a lack of training and oversight within the Permit Section and not an intentional act by the employees to allow unsafe loads on the highways. While the crane rental companies thought they were receiving preferential treatment in their requests for permits, in reality the Permit Section employees would have issued the permits anyway, believing they were in compliance with the guidelines of the Division.

As a result of the Commission investigation, Highways conducted an internal review of its permitting process, including training and oversight. This review resulted in the removal of the permitting process from District I and reassigning it to the Central Office. Additionally, changes were recommended for the automated permitting software to prevent future overrides in the system.

In September 2004, one of the District I employees entered into a plea agreement in Kanawha County whereby he pled to one count of Unlawful Rewarding for Past Behavior (§61-5A-4) and agreed to pay a fine and restitution. A jail term of 3 months was suspended and he was placed on probation for a term of 12 months.

July 2005, two (2) other employees from the District 1 Special Permit Section plead guilty to "Unlawful Rewarding for Past Behavior." They were both fined \$50. One paid \$153.50 in court costs and one was ordered to pay \$1,209.35 in restitution

Division of Homeland Security and Emergency Management (Misuse of Funds)

In February 2005, the Commission received information of spending irregularities and mismanagement associated with millions of dollars in Federal Homeland Security funds. Among suspected activities was state employee personal use of state vehicles, purchasing and fuel cards as well as improper procurement of highly sophisticated and costly equipment and vehicles.

Through interviews and document review, Commission investigators identified several areas of interest. Documents from multiple state agencies were cross-referenced and a pattern of possible abuse of a state fuel purchasing card and vehicle were identified. This resulted in the expansion of the scope of the investigation and additional interviews and on site visits were made. An attempt to conduct a follow-up interview of the Director of the West Virginia Regional Response Program, Neil Sharp III, was preempted by Sharp's resignation and relocation out of state.

The investigation continues with inquiries into state P-Card purchases, contract purchases, inaccurate and incomplete inventory records, improper equipment disbursements, and questionable sub-grant issuance.

Lee Gray, Director of Administration for the Department of Homeland Security and Emergency Management resigned effective July 29, 2005.

This investigation is still ongoing.

Highways (Grant County Supervisor)

Gary Kitzmiller was hired as the County Supervisor for the Division of Highways (DOH) in Grant County in June 1997. Prior to Kitzmiller being hired as the DOH Grant County Supervisor, he was the owner/operator of a construction company known as "A.L.L. Construction."

In May 2004, information was received by the Commission on Special Investigations that Gary Kitzmiller was running his private construction company (A.L.L. Construction) and had a timbering business in Grant County. According to the information received, Kitzmiller was operating two private businesses while supposedly working during the day as the DOH Grant County Supervisor. According to the information received, Kitzmiller tried to conceal the fact that he owned the construction company by saying his wife, Linda, and his son, Jason, owned and operated the company.

During an interview, one DOH employee stated that he had seen Gary Kitzmiller in a DOH vehicle in other counties in the eastern panhandle, and had also observed Kitzmiller in a DOH vehicle on A.L.L. Construction Company construction sites during DOH work hours.

An employee at the Grant County DOH office stated that Gary Kitzmiller had directed employees 20 or more times to enter the DOH REMIS computer system and look up DOH Engineers' construction cost estimates on projects that were being let out for bid. One employee was directed on July 12, 2004 to look up a DOH Engineer's construction cost estimate and provide these figures to his son, Jason Kitzmiller. This bid was to be opened the next day in Charleston, West Virginia. This bid was won by A.L.L. Construction Company.

Office employees of the DOH Grant County office advised investigators that they had observed Jason Kitzmiller using a State computer at the Petersburg DOH office five or more times.

Investigators interviewed an employee of the Region VIII Planning & Development Council, which was overseeing a sewer and water grant in Elk Garden, Mineral County, West Virginia. This individual stated on May 28, 2002, Gary Kitzmiller, who is personally known by this individual, came to a mandatory pre-bid and signed the sign-in sheet with his name and that he was representing A.L.L. Construction.

Investigators obtained the DOH time cards for May 28, 2002. Kitzmiller had reported that he had worked for the DOH on that day.

Investigators interviewed a Grant County DOH employee, who stated on June 1, 2004, he was clearing brush on a County highway and observed Gary Kitzmiller drive by in his DOH vehicle. The employee stated a few minutes later he observed Gary Kitzmiller driving his (Kitzmiller's) personal logging truck, loaded with logs, past the same location. The individual stated approximately 30 to 40 minutes later, Gary Kitzmiller drove by the worksite again and the logs were no longer on the log truck. The individual stated that a little while later, Gary Kitzmiller was observed driving by the worksite again, however he (Kitzmiller) was in his DOH vehicle.

Investigators checked the employee time report for June 1, 2004. Gary Kitzmiller reported that he had worked 11 hours as a DOH Supervisor for June 1, 2004.

One DOH Project Engineer advised Investigators that on two separate occasions, while overseeing jobs in Grant and Hampshire Counties, he observed Gary Kitzmiller during normal DOH hours in a DOH vehicle delivering A.L.L Construction payroll checks to A.L.L. Construction employees.

Investigators obtained the DOH cellular telephone billings for the DOH cell phone assigned to Gary Kitzmiller. It was determined that approximately 60 to 70 percent of all calls made by Kitzmiller were to either the A.L.L. Construction business office or to cell phones assigned to A.L.L. Construction employees.

Investigators reviewed the West Virginia Unemployment Compensation Wage Reports for A.L.L. Construction from the first quarter of 2000 through the second quarter of 2004. These Compensation Wage Reports show the amount of money reported to West Virginia Unemployment. From the third quarter of 2001 to the end of the second quarter in 2004, A.L.L. Construction Company paid Gary Kitzmiller over \$92,000. This was while he was a full-time employee of the State of West Virginia Division of Highways.

On January 21, 2005, Gary Kitzmiller resigned from the Division of Highways.

On February 15, 2005, a Report of Investigation was provided to the Kanawha County Prosecuting Attorney's Office for their review.

On February 17, 2006, Kitzmiller was sentenced to 30 days probation and fined \$750.00.