

West Virginia Legislature
Joint Committee on Government & Finance
Commission on
Special Investigations



Thirty-fourth Annual Report



President of the Senate Speaker of the House of Delegates
Jeffrey Kessler Tim Miley
Co-Chairmen



June 30, 2014

Table of Contents

	Page
Dedication to Retiring Director	1
Mission Overview	2
Commission Members	4
Commission Staff	6
Acknowledgements	9
Activities of the Commission	
Highways (US Attorney's Task Force)	10
Glenville State College – No-bid Contract	11
Fairmont State University – Embezzlement	12
Public Defender Services – Embezzlement	14
Pocahontas Prosecutor's Office – Malfeasance/Embezzlement	14
Nicholas County Commission – P-Card Abuse	15
Appendix A:	
Newspaper Articles	
Appendix B:	
Powers & Duties of the Commission	
Appendix C:	
Rules of the Commission	

Dedication to Retiring Director

Gary W. Slater

Gary William Slater enlisted with the West Virginia State Police in 1965 following an honorable discharge from the United States Air Force where he saw duty in remote areas of Alaska.

Upon graduation from the State Police Academy, Gary was assigned to the Princeton Detachment where he conducted traffic and criminal investigations. Gary became involved in the investigation of the bombing at Bluefield State College in 1968, where a newly constructed \$1.6 million Physical Education Building suffered extensive damage. Gary, working with a team of local and State Police investigators, was instrumental in the identification, arrest and prosecution of those responsible for the bombing.

Having been recognized for his investigative talents, Gary was assigned as a plain clothes Trooper to work various cases throughout the State involving improperly prescribed medicines and narcotics, the result of which was his eventual assignment by the State Police to the newly created Purchasing Practices and Procedures Commission in 1970. Here Gary applied his unique investigative style to investigate numerous matters involving purchasing irregularities, and public corruption. The Commission was renamed the Commission on Special Investigations in 1980. Gary retired from the State Police in 1986 at the rank of Captain.

Upon his retirement from the State Police, Gary was immediately hired as an Investigator with CSI, where he continued to investigate all matters under the purview of the Commission. In 1989 he was named Director of the Commission with supervisory and administrative duties requiring his involvement with hundreds of investigations over the following years.

Even though he had been appointed as CSI Director, he continued his active involvement in investigations, acting as lead investigator in many important investigations and directing other investigators in their investigative efforts.

On June 30, 2014, Gary retired from State service after serving 25 years as Director. Gary's total service to the State of West Virginia spanned five decades. Governor Earl Ray Tomblin recognized Gary as a Distinguished West Virginian upon his retirement and the Commission bestowed upon Gary a Certificate of Appreciation during Gary's last Commission meeting.

To Gary, in recognition of his dedicated service to the Commission and the State of West Virginia, this Annual Report is dedicated.

Mission Overview

The Mission of the Commission on Special Investigations is broadly outlined under Chapter 4, Article 5 and includes investigation into the purchasing practices and procedures of the state, investigation of conflicts of interest, bribery of State officials, malfeasance, misfeasance or nonfeasance in office by any employee or officer of the state, and to conduct investigations to determine if any criminal or civil statutes have been violated at any level of State government. The Commission has conducted hundreds of investigations into fraud and public corruption in which the State of West Virginia was the victim. Commission Investigators work in conjunction with the United States Attorney's offices in West Virginia, the fifty-five county prosecuting attorneys, local, county and state law enforcement as well as the FBI, IRS and other Federal law enforcement, regulatory and investigative agencies.

The staff of the Commission on Special Investigations is comprised of a Director, six Investigators and an Administrative Assistant. The law enforcement and investigative experience of individual investigators ranges from thirty- one to forty- nine years. And at any one time the Commission may have a dozen or more active investigations.

The Commission was originally formed as a result of a Federal corruption investigation of Governor W. W. Barron and several members of his Administration that was conducted in the late 1960's by the Internal Revenue Service. The six year investigation revealed a need for an independent investigative agency within State government that would be empowered to investigate public corruption unimpeded by politics or other traditional barriers

In September 1968, Governor Hulett Smith convened a special legislative session and then Senator William T. Brotherton purposed the creation of a special commission to investigate the purchasing practices of the state. The result was the creation of the Purchasing Practices and Procedures Commission (PPPC), which was in 1980, renamed the Commission on Special Investigations, or as it is more commonly known, CSI.

The actual Commission is comprised of ten members of the Legislature, with the President of the Senate and Speaker of the House of Delegates as its co-chairmen. The other eight members, four from the Senate and four from the House, represent both political parties. Meetings are conducted during interim sessions of the Legislature,

generally on a monthly basis, and are in executive session. By statute, all of CSI's records are exempt from the Freedom of Information Act (FOIA).

Early newspaper accounts referred to the Commission's Investigators as "West Virginia's Untouchables" because the Commission was created specifically to be, and have remained, beyond the reach of the political influence of either the executive or legislative branches

Today, more than four decades after its creation, CSI is responsible for the investigation and prosecution of any crimes involving public corruption at any level of State government. Commission Investigators have investigated and successfully prosecuted cases involving embezzlement, larceny, forgery, bribery, extortion, falsifying accounts, obtaining money by false pretenses, and mail and wire fraud. CSI Investigators have been actively involved in prosecuting cases in both State and Federal court.

CSI investigations may involve "any level of State government," i.e., any level where there is an involvement or infusion of State money, resources or personnel. CSI has investigated not only State agencies, officers, elected officials and employees, but also, county and municipal entities which receive or use State or Federal funds passed through the State.

Many CSI investigations begin with a call from a concerned citizen who has become aware of something "that just doesn't seem right" or which is obviously a violation of law. CSI investigators work closely with many people within and without State government and our reputation for professionalism is second to no other investigative agency, State or Federal. Our contacts are confidential as are our investigations.

CSI contact information: telephone: (304) 347-4120; email; CSI@wvcsi.gov

Commission Members

§4-5-1 Code of West Virginia

“The commission shall continue to be composed of five members of the Senate, to be appointed by the president thereof, no more than three of whom shall be from the same political party; and five members of the House of Delegates, to be appointed by the speaker thereof, no more than three of whom shall be appointed from the same political party: **Provided**, That in the event the membership of a political party is less than fifteen percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than fifteen percent membership may be one from that house. The commission shall be headed by two cochairmen, one to be selected by and from the members appointed from the Senate, and one to be selected by and from the members appointed from the House of Delegates. All members of the commission shall serve until their successors shall have been appointed as heretofore provided.”

These Legislators are responsible for overseeing the activities of the Commission Staff, which are reviewed in executive session during Legislative interim meetings. A quorum, consisting of the majority of the total authorized membership, is required to open or close an investigation or refer a matter to an appropriate Legislative Committee, if the subject falls outside the Commission’s purview.

Commission on Special Investigations

Jeffrey V. Kessler (D)
President

Co-Chairman – Commission on
Special Investigations
Joined the Commission - 2011



Timothy Miley (D)
Speaker

Co-Chairman – Commission on
Special Investigations
Joined the Commission - 2013



Donna J. Boley (R)

Joined the Commission - 2001



Brent Boggs (D)

Joined the Commission - 2009



Mike Hall (R)
Minority Leader

Joined the Commission - 2010



John N. Ellem (R)

Joined the Commission - 2007



Corey Palumbo (D)

Joined the Commission - 2011



Patrick Lane (R)

Joined the Commission - 2009



John R. Unger II (D)
Majority Leader

Joined the Commission - 2011



Harry Keith White (D)
Majority Leader

Joined the Commission - 2007



Commission Staff

§4-5-2(b) (3)

The Commission is empowered to: “Employ such legal, technical, investigative, clerical, stenographic, advisory and other personnel as it deems needed and, within the appropriation herein specified, fix reasonable compensation of such persons and firms as may be employed: *Provided*, That such personnel as the commission may determine shall have the authority to administer oaths and take affidavits and depositions anywhere in the state.”



Gary W. Slater – Director

Joined Commission Staff in 1979

Appointed Director 1989

Retired June 30, 2014

49 years

Law Enforcement/Investigative

Experience



Herbert R. Cogar – Investigator
Joined Commission Staff in 1992

38 years
Law Enforcement/Investigative
Experience



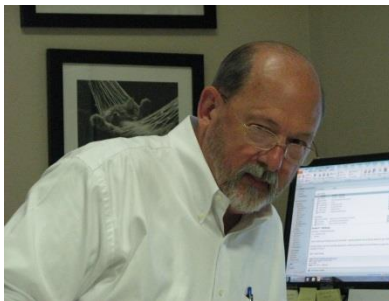
Steven E. Staton – Investigator
Joined Commission Staff in 1999

40 years
Law Enforcement/Investigative
Experience



Roy M. Hutchison – Investigator
Joined Commission Staff in 2001

40 years
Law Enforcement/Investigative
Experience



James S. Powers – Investigator
Joined Commission in 2002

38 years
Law Enforcement/Investigative
Experience



Charles R. Bedwell – Investigator

Joined Commission Staff in 2003

31 years

Law Enforcement/Investigative
Experience



Carl E. Hammons – Investigator

Joined Commission Staff in 2006

35 years

Law Enforcement/Investigative
Experience



**Lisa M. Wilkinson –
Administrative Assistant**

Joined Commission Staff in 1985

29 years State Service

The CSI Staff Investigators are responsible for conducting comprehensive and detailed investigations on behalf of the West Virginia Legislature, Joint Committee on Government & Finance, into the purchasing practices and procedures of the State and other matters of public corruption. To that end, Investigators work with their counterparts in local, State and Federal law enforcement agencies as well as other State entities and local and federal prosecutors.

Ongoing CSI investigations are confidential and our records are not subject to Freedom of Information release.

Acknowledgements

The Commission on Special Investigations receives information from a variety of sources, both public and private. CSI solicits and accepts information of potential wrongdoing from individual citizens, governmental employees and governmental agencies, many of whom do so at substantial personal risk. Absent this assistance, it would be difficult for the Commission to perform its duties.

While we recognize the contributions to CSI efforts made by various County Prosecuting Attorneys, United States Attorneys and Assistant United States Attorneys, Federal Special Agents, State Troopers, Sheriff's and their Deputies and local police agencies, there have been some that have provided specific assistance to us over the past year that significantly aided in the successful investigation and prosecution of important matters. Due to the ongoing nature of some investigations, and the need to protect the confidentiality of some who have worked closely with CSI, we cannot acknowledge every individual by name; however we would like to acknowledge the contributions of the following:

- William J. Ihlenfeld II, United States Attorney, WVND
- Booth Goodwin, United States Attorney, WVSD
- AUSA Andrew R. Cogar, US Attorney's Office, WVND
- AUSA John Parr, US Attorney's Office, WVND
- Brandy Sims, Assistant Prosecuting Attorney – Jefferson County
- S/A Steve Anderson, FBI Clarksburg
- S/A Morgan A. Spurlock, FBI Clarksburg
- SGT L. K. Boytek, WVSP BCI
- CPL J.W. Smith, WVSP BCI
- Tim Butler, WV State Auditor, Director of Program Oversight, Purchasing Card Program
- Kitty Wilson – Public Defender Services

Activities of the Commission

July 1, 2013 – June 30, 2014

During this fiscal year, the Commission on Special Investigations opened 11 investigative files and closed 55. Additionally the Commission Staff conducted preliminary inquiries into numerous allegations or suspicions of wrongdoing, determining there was no basis for an in-depth investigation, or there was insufficient information to proceed.

The Commission met in executive session a total of 10 times, once during each interim session of the Legislature. During these meetings Commission Staff made oral presentations to Commission members regarding alleged wrongdoing by agencies, individuals and/or firms conducting business with the State of West Virginia.

When an investigation results in criminal prosecution and/or restitution to the State, the case may be closed. It is, however, not unusual for a CSI investigation to result in changes to an agency's policies or procedures or discipline of an offending employee, if no criminal action is identified or prosecution is not pursued. CSI investigations can also result in changes to State law as proposed by the Commission.

The following are representative of the investigative activities conducted by Commission Staff during this fiscal year.

Highways (US Attorney's Task Force)

CSI is a participating member of the U.S. Attorney's Office Public Corruption Unit (Northern District of WV), along with agents of the Federal Bureau of Investigation, General Services Administration (Office of the Inspector General) and West Virginia State Police (Bureau of Criminal Investigations). This unit has been involved since early 2013 in a federal investigation involving the West Virginia Division of Highways (Equipment Division) located at Buckhannon, WV.

In August 2013, Federal search warrants were executed at the WVDOH Equipment Division in Buckhannon and the location of a State vendor in Cambridge, Ohio.

In February 2014, WVDOH Supervisor Barry D. Thompson of Mount Clare, WV was indicted by a Federal Grand Jury for **one count of making a false statement to a Federal Agent, a violation of United States Code, Title 18, § 1001.**

In March 2014, WVDOH Supervisor Edward M. Tuttle of Buckhannon, WV was indicted by a Federal Grand Jury **for one count of making a false statement to a Federal Agent, a violation of United States Code, Title 18, § 1001.**

This is an active, ongoing criminal investigation.

Glennville State College – No-bid Contract

In November 2013 CSI received information from the offices of the Legislative Auditor that Glennville State College had entered into a “Sole Source” contract with an individual to provide “Media Services” to various entities within the college. The Auditor’s Office had questioned the appropriateness of the Sole Source determination as the services contracted for appeared to be ordinary media related services that could be provided by any number of vendors and the contract had an annual value in excess of \$36,000. The original one year, no–bid contract, which identified the vendor as an independent contractor, was awarded in 2007 and subsequently renewed each year through 2013. Total payments under the contract totaled nearly \$200,000.

Following a preliminary inquiry by CSI Investigators the Commission opened a matter and the following investigative determinations and recommendation were made.

As an independent contractor the vendor should have provided all necessary equipment and supplies to perform the contracted services, however CSI Investigators determined the College had provided some photographic equipment and other supplies for the contractor’s use.

The contractor was required under the terms of the contract to supply detailed invoices to justify all requested payments each month. The invoices were vague and lacked any indication of what hours were devoted to the services billed even though the contract specified the contractor would be paid by the hour. Additionally, often the invoices were combined for multiple months, with no itemization as to what services were performed in what month. The invoices always requested payment for 160 hours for each month, regardless of the number of weeks in the month. The invoices would total the maximum allowable annual charges allowed under the contract.

Due to the annual value of the contract exceeding \$25,000 the contract was required to be bid under the Higher Education Procurement Guidelines, unless it qualified as a sole source purchase. College records included no résumé or other documentation that would list the particular skills, knowledge, training or experience that would indicate what the contractor was qualified to do for the College. There was nothing described in

the contract or presented by the College or the contractor regarding the contractor's uniqueness to perform the required services that would justify a sole source contract. Under Higher Education policy, determining sole source is a duty and responsibility to be performed by the College Chief Procurement Officer. In this instance the sole source determination was made by the College President.

The contractor invoiced the College for time he spent "learning about potential things he wanted to propose to the College for implementation." As an independent contractor a vendor would provide all material and equipment, and the skills and knowledge necessary to fulfill the contract, the College should not have paid the contractor to "educate himself" nor supplied material or equipment.

The contractor kept no log, journal, diary or notes, or other business records as to what activities he performed under the contract, and prepared the invoices every month or two from memory. The College could not detail any specific things the contractor had accomplished under the contract.

CSI recommended to the College that the contract be terminated and be bid in accordance with Higher Education guidelines should the College wish to continue the contractual relationship for whatever services they were receiving. The Legislative Auditor's report made a similar recommendation.

While the issuance of the contract as sole source was not in compliance with the Higher Education Procurement Guidelines, CSI found no evidence of deliberate criminal intent to defraud the College through the issuance of the contract or through the invoices submitted by the vendor for payment. The College has advised the contract is "null and void" and the contractor no longer receives payment from the College for any services.

Fairmont State University (Embezzlement)

In February 2013 CSI received information from the West Virginia State Auditor's Office Purchasing Card Division, of possible fraudulent P-card activity at Fairmont State University. CSI Investigators began an initial inquiry in cooperation with the FBI, the IRS, the University Police Department and Auditors from the State Auditor's Office.

The Commission and The United States Attorney for West Virginia, Northern District opened matters and a joint investigation was conducted.

It was determined that the former University Vice President and Chief Information Officer, David Tamm used his position of trust to order high end technology that

included several hundred computer switches valued at several thousand dollars each under State Higher Education purchasing contracts from October 2007 through January 2014.

These switches were not for use within the University technology system, but rather were ordered by Tamm with the expressed purpose of reselling them for personal profit. Tamm had many of the items shipped to the University and held at the receiving facility, where he picked them up and transferred them to his personal vehicle. He then repackaged or relabeled the items and shipped them to various entities he had made contact with over the internet, selling the switches at a greatly reduced price. Tamm had the payments wire transferred to his personal bank account. The items were subsequently paid for by the University.

Tamm was able to procure the items and transfer them to various companies in multiple states without being detected. The scheme was in large part possible due to Tamm's purchasing practices having little or no oversight from University officials and Tamm's ability to take possession of the items before they could be inventoried. The investigation also determined that Tamm used the majority of the money he received to finance a lavish life style that included a new residence valued at over one-half million dollars and several high end vehicles that included two Mercedes.

Tamm also used the University Purchasing Card to purchase advanced technology for his new private residence that included security cameras, flat screen televisions and other high tech electronics.

Much of the technology installed in the residence was recovered through a search warrant obtained by the FBI and the residence was seized and forfeited by the United States Attorney's Office. Tamm had disposed of the vehicles before forfeiture proceedings could be initiated and none of the technology sold by Tamm was recovered. Tamm's bank accounts were void of funds and no cash was recovered.

In May 2014, Tamm pled before Judge Irene Keeley to an Information in The United States District Court for the Northern District of West Virginia and received a sentence of 46 months in Federal Prison to be followed by three years of supervised release with restitution ordered totaling \$1.32 million to the University and \$225,000 to the IRS for taxes he failed to pay on the income he received from the sale of the computer switches.

Based upon recommendations made by the State Auditor's Purchasing Card Division, the University has taken steps to minimize the possibility that such embezzlement could occur again.

Public Defender Services – Embezzlement

In August 2011, CSI received information from the office of Public Defender Services (PDS) that one of its Chief Public Defenders, Denney W. Bostic, of the Lewisburg office may have embezzled PDS funds.

CSI Investigators conducted an initial inquiry and the Commission opened a matter in September 2011.

The investigation revealed that Bostic had requested the Lewisburg PDS Board issue him a credit card, which Bostic then used to make personal purchases that included gasoline, meals and utility payments, as well as using the card to obtain cash advances which he then converted to personal use. Bostic's improper purchases ran from February 2011 – August 2011, totaling approximately \$27,000. It was determined Bostic had reimbursed PDS approximately \$9,300 before the PDS office became aware of the activity.

Aware that he was being investigated, Bostic self-reported his embezzlement to the West Virginia State Bar and voluntarily surrendered his law license.

A special prosecutor was appointed in the case and Bostic was indicted for embezzlement by the Greenbrier County Grand Jury in June 2013.

In September 2013 Bostic entered a Kennedy Plea to **the Felony Offense of Attempt to Commit a Felony Offense: Embezzlement**. Bostic was sentenced to 1-3 years in the State Penitentiary, which was suspended and Bostic was placed on probation for a period of two (2) years. Bostic had paid \$17,456.70 in restitution to the PSD prior to sentencing and his license to practice law in West Virginia was annulled.

Pocahontas County Prosecutor's Office – Malfeasance/Embezzlement

In May 2013, CSI received information from the Pocahontas County Prosecutor's Office that the immediate former Prosecuting Attorney for Pocahontas County, Donna Price, had taken items when she vacated the office that were property of the County and that funds were missing from the office investigative fund.

Based upon information provided to CSI from a preliminary auditing of the office by the current Prosecuting Attorney, the Commission opened a matter.

CSI investigators determined that Price had removed items valued at approximately \$3,600 when she left the office and these items, which were purchased with County funds, were the property of the County. It was also determined that approximately \$1,100 was missing from the investigative fund.

A Special Prosecutor was appointed and Price was indicted in April 2014 on one count of embezzlement related to the investigative fund.

This matter remains active at this time.

Nicholas County Commission – P-Card Abuse

In September 2013, CSI received information that 100 or more radios purchased with a Homeland Security grant were missing. CSI conducted a preliminary inquiry and determined the radios were not missing, but unaccounted for due to poor bookkeeping by County personnel, which resulted in Investigators and others mounting a concerted effort to track down all of the radios in question.

During the preliminary inquiry Investigators found evidence that Carla Hennessey, Nicholas County Emergency Services Director, was misusing her Purchasing Card.

CSI, in conjunction with the State Auditor's Office conducted a forensic audit and determined there were multiple instances of P-card fraud. The investigative findings were presented to the Nicholas County Prosecutor and at the request of the Prosecutor, CSI Investigators met with the Nicholas County Commission and disclosed the investigative findings to that body.

In February 2014 the County Commission fired the EMS Director and a Special Prosecutor from Raleigh County was appointed to the case. At the direction of the Special Prosecutor, Hennessey was arrested on one felony count of Fraudulent Schemes by the West Virginia State Police.

This case is scheduled for presentation to the Nicholas County Grand Jury.

Appendix A

News Items

Feds execute warrant at Cambridge business

Rick Stillion
The Daily Jeffersonian
Published: August 21, 2013 1:00PM

Federal agents on behalf of the U.S. Attorney General's Northern District of West Virginia office in Wheeling, W.Va., executed a search warrant Tuesday at Motrim Inc. on Steubenville Avenue in Cambridge.

A spokesperson for the Attorney General's Office said the warrant was for records and documents. "No arrests will be made at this time," said Chris Zumpetta, public information officer. "It is part of an on-going investigation, and we cannot comment further on an on-going investigation." Zumpetta said it could take several months to complete the investigation.

"We cannot comment further unless someone is arrested and charged in connection with the investigation," she said.

No other warrants were executed Tuesday in connection with the investigation. Zumpetta said she could not provide the nature or origin of the investigation.

Federal agents and police officers from Ohio, West Virginia and Pennsylvania assisted with the federal warrant. Agents from the Internal Revenue Service-Criminal Investigation Division and Dayton police were visible.

Several unmarked law enforcement vehicles including trucks, cars and a van were present at the business while the warrant was executed.

Attempts to reach owner Jack Cartner at the business were unsuccessful.

Motrim Inc., 240 Steubenville Ave. in Cambridge, is a leading distributor of boom mowers. According to the company's website, Motrim Inc. has been manufacturing boom mowers for more than 40 years.

No additional information was available as of press time

Wednesday. rstillion@daily-jeff.com

Former DOH supervisor pleads guilty to providing false information regarding misuse of state resources

By [MetroNews Staff](#) in [News](#) | October 15, 2014 at 12:55PM

BUCKHANNON, W. Va. – A former West Virginia Division of Highways supervisor pleaded guilty to lying about the misuse of state resources.

Barry D. Thompson, 49, of Mt. Clare, entered the guilty pleas to two counts of providing false information to a West Virginia State Trooper Wednesday in the Magistrate Court of Upshur County.

He was sentenced by Magistrate Juanita Adams to one year of probation.

Thompson, who is also under federal indictment for lying to a federal agent, has agreed to cooperate with federal authorities in their ongoing investigation of the WV Division of Highways Equipment Division. If he fully cooperates, the U.S. Attorney's Office will dismiss the pending federal indictment.

Investigations have revealed Thompson denied any knowledge state employees had misused state resources to repair vehicles no longer owned by the state. However, he admitted Wednesday to instructing at least one state employee to repair a dump truck that had previously been sold at public auction at the state's expense and on state time.

Thompson was also present when a state employee was directed to travel in his state issued vehicle, on state time, to purchase a replacement muffler for the same dump truck. The muffler did not fit and Thompson exchanged it, receiving a refund for the returned muffler. Then, both mufflers were sold at a discounted rate normally provided to the Division of Highways.

The case was investigated by the U.S. Attorney's Public Corruption Unit, while the FBI, State Police and State Commission on Special Investigations led the inquiry. Assistant U.S. Attorney John C. Parr prosecuted the case on behalf of the government.

Citizens are encouraged to report public corruption by calling the West Virginia Public Corruption Hotline at 855-WVA-FEDS or by sending an email wvafeds@usdoj.gov.

Feds examine DOH contract with Ohio firm

by Eric Eyre

Staff writer - Charleston Gazette

CHARLESTON, W.Va. -- Federal authorities are investigating a Division of Highways equipment division contract with an Ohio company that supplies parts for roadside mowers.

The U.S. Attorney's Office served search warrants at the DOH's equipment office at Buckhannon and at MoTrim Inc. in Cambridge, Ohio, earlier this week.

"We do know there's a federal investigation going on," said Carrie Bly, a DOH spokeswoman. "We're cooperating in any way we can."

Federal agents hauled away truckloads of documents from both locations. The investigation is expected to take several months.

MoTrim has a state contract to supply parts for Division of Highways mowers. The contract allows DOH equipment division employees to buy MoTrim parts with state purchasing cards, or "P-cards," state records show.

"All I can tell you was there was a search warrant issued for records, and no arrests were made," said Chris

Zumpetta, a spokeswoman for the U.S. Attorney's Office Northern District in Wheeling.

Investigators and police from Ohio and West Virginia assisted with the federal warrant at MoTrim's headquarters, according to the Daily Jeffersonian newspaper in Ohio. The FBI also is taking part in the probe.

A MoTrim spokeswoman said Wednesday the company would have no comment on the federal investigation, then hung up on a reporter.

MoTrim, which was awarded the state parts contract in 2012, also distributes boom mowers.

In 2006, the state Ethics Commission and Legislative Auditor's Office investigated truck and equipment purchases at the DOH equipment division. At the time, division Director Robert Andrew called the investigation a "bunch of malarkey." The investigation's findings weren't made public.

The DOH equipment division in Buckhannon buys trucks, bulldozers, graders, excavators, lawn mowers, parts and other equipment for state highway garages throughout the state. The office has about 90 employees.



**OFFICE OF THE UNITED STATES
ATTORNEY NORTHERN DISTRICT OF
WEST VIRGINIA**

**William J. Ihlenfeld, II
UNITED STATES ATTORNEY**

1125 Chapline Street, Federal Building, Suite 3000 • Wheeling, WV 26003
(304) 234-0100 • Contact: Chris Zumpetta-Parr, Public Affairs Specialist

March 7, 2014
FOR IMMEDIATE RELEASE

W.Va. Division of Highways Administrator Indicted on False Statement charge

CLARKSBURG, WEST VIRGINIA – An administrator with the state Division of Highways has been charged with making a false statement to a federal agent.

United States Attorney William J. Ihlenfeld, II, announced that EDWARD MATTHEW TUTTLE, 38 years old, of Buckhannon, West Virginia, was indicted by a federal grand jury this week on one count of "False Statement to a Federal Agent." TUTTLE is charged with making materially false statements last month to an F.B.I. agent who questioned him as part of an ongoing federal investigation into the Equipment Division of the West Virginia Division of Highways. TUTTLE currently serves as the Highway Administrator for WVDOH in Upshur County, and formerly served as a supervisor with the Equipment Division.

An indictment is merely an accusation and TUTTLE is presumed innocent until and unless proven guilty. TUTTLE faces up to five years in prison and a fine of up to \$250,000 if he is convicted. Under the Federal Sentencing Guidelines the actual sentence imposed will be based upon the seriousness of the offense and his prior criminal history, if any.

This case is being prosecuted by Assistant United States Attorney John C. Parr and was investigated by the U.S. Attorney's Office Public Corruption Unit. Agents and officers from the Federal Bureau of Investigation, the West Virginia State Police, and the State Commission on Special Investigations are leading the inquiry.

Former Pocahontas prosecutor indicted for embezzlement

April 2, 2014 2:24 PM

By CHRIS DICKERSON

MARLINTON- The former Pocahontas County prosecuting attorney has been indicted on felony charges of embezzlement.



Price

On Tuesday, a grand jury indicted Donna Meadows Price for allegedly embezzling more than \$1,000 during her tenure as the county prosecutor from June 2009 to December 2012.

While she wasn't indicted on a count of grand larceny, the indictment also claims she stole almost \$4,000 in goods on her last day of office in December 2012. That list includes three iPad 2s, various law books, office supplies and equipment, paper shredders, a space heater, a printer stand and Nook accessories.

Price was defeated in the 2012 general election by Marlinton attorney Eugene Simmons, who joined the race as an Independent after Price won the primary.

At the time of her defeat, a six-count statement of charges had been filed against her in 2011 by the Lawyer Disciplinary Board, the prosecutorial arm of the state Supreme Court. The statement stemmed from complaints lodged against her by the county's two circuit judges, Joseph C. Pomponio Jr. and James C. Rowe, who accused Price of either dereliction of duty or making questionable decisions.

Specifically, Pomponio accused Price of failing to prepare orders in cases, including juvenile delinquency, present cases to the grand jury, return telephone calls, spend sufficient time in the office and cooperate with law enforcement. The statement noted in a letter sent to Pomponio dated four days earlier, Sheriff David

Jonese said Price failed to bring multiple drug-related cases in trial the previous two years, and asked for the appointment of a special prosecutor to handle them.

In his complaint, Rowe took issue with Price using a woman placed on an improvement period by the state Department of Health and Human Resources in an abuse and neglect case as a confidential informant to aid in undercover drug buys. Though Price denied it was, Rowe said the woman acting as an informant was a conflict of interest by not only exposing her to the very thing to which she has an addiction, but also putting her in jeopardy of permanently losing custody of her child in violating the terms of her improvement period.

Also, Rowe noted that after she was appointed as a special prosecutor, Price sat on the case of a Greenbrier County sheriff's deputy accused of having sex with a minor for nearly a year. According to the statement, Price asked to be removed from the case in early 2011.

Last month, the state Supreme Court took the recommendation of the Lawyer Disciplinary Board and reprimanded Price for her actions in that statement of charges. It ordered her to follow a written and executed plan of supervised practice for three years, complete nine additional hours of continuing legal education per year and to pay court costs for the proceedings.

Pocahontas County case number: 14-F-01; West Virginia Supreme Court of Appeals case number:

11-1345

West Virginia Supreme Court



Charges may be dismissed in former prosecutor's case

A pre-trial conference in the embezzlement case against former Pocahontas County Prosecutor Donna Meadows-Price was held Monday in the Pocahontas County Circuit Court with the Honorable Judge Thomas H. Keadle presiding.

Special prosecutor Kristin Cook and Defense Counsel Tim Carrico presented an agreement to the court.

The agreement calls for the defendant to reimburse the county \$3,821.30, which is the dollar amount stated in the indictment for items allegedly removed by Price when she left the prosecutor's office.

In exchange for that reimbursement, the state will ask that the charge against Price be dismissed with prejudice.

The term "with prejudice" means that the matter has come to an end and charges cannot be refiled.

Price was indicted by the Grand Jury in April on one felony count of embezzlement. That indictment, written as defined in the West Virginia Code, alleges that Price "feloniously embezzled or fraudulently converted to her own use, money, bank notes, drafts, security for money or any effects or property of any other person," of an amount of more than \$1,000.

Price served as Pocahontas County Prosecuting Attorney from June 2009 to December 2012.

The Clarksburg Exponent Telegram

February 8, 2013

FSU investigation began with tip about 'suspicious activity'

by Jim Davis STAFF WRITER

FAIRMONT — A Fairmont State University employee's concerns about "suspicious activity" prompted an investigation that led to an administrator being placed on leave, a university spokeswoman said Thursday.

David Tamm, vice president and chief information officer, has been on administrative leave since Jan. 28, said Ann Booth, director of university communications.

Tamm was drawing his salary until Thursday, when he was placed on unpaid leave, Booth said.

"He was notified this morning," she added.

Feds seek forfeiture of Fairmont State Official's Bridgeport home

by Matt Harvey Assistant Managing Editor | Posted: Tuesday, June 18, 2013 8:56 am

BRIDGEPORT -- The federal government is seeking a civil forfeiture of the Bridgeport home belonging to Fairmont State University's chief information officer.

Assistant U.S. attorneys Andrew Cogar and John Parr filed the verified complaint for forfeiture with U.S. District Judge Irene M. Keeley in Clarksburg. In the filing, the government lawyers allege a scheme by David Tamm, also a Fairmont State vice president, to fraudulently obtain nearly \$650,000.

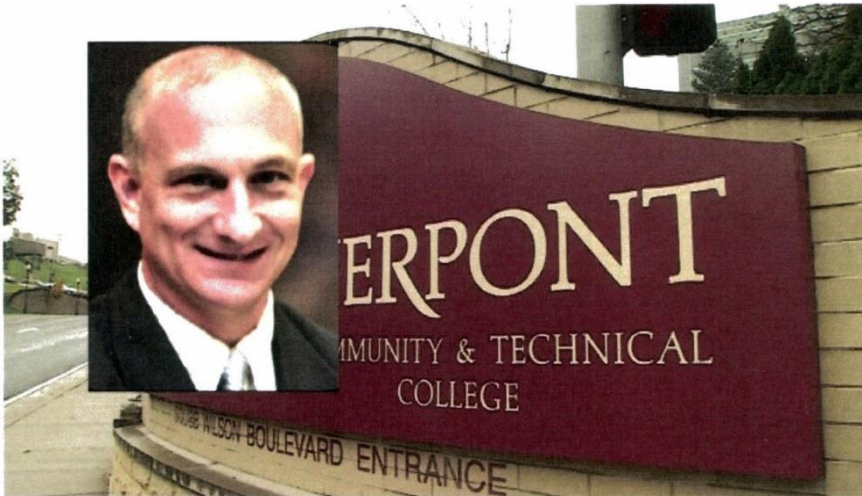
Keeley shortly afterward issued a protective order on the property at 102 Rosewood Court, Bridgeport. The government alleges closing for the property was April 10, 2012, "during the fraud violations." The cost was \$435,000, and the deed shows Tamm mortgaged the property for \$342,500, according to the filing.

The protective order prevents Tamm from entering any agreement to sell the property during the forfeiture. In the event the court orders the property sold while the action is pending, according to Keeley's ruling, the net proceeds would be put in an interest bearing account controlled by the U.S. Marshals Service.

WASTE WATCH
from Eyewitness News Online

Alleged Scam

Former FSU Administrator Accused Of Stealing State Money
October 24, 2013



As Vice President and Chief Information Officer, David Tamm was a member of Fairmont State University's inner circle. He sat in on regular meetings with the president and other top officials, charting the school's course. But federal documents allege Tamm stole nearly \$650,000 over several years, and the actual amount could be much higher.

In January 2013 a Fairmont State employee complained to superiors about improper use of a purchasing card. That kicked off a series of events which led to Tamm's suspension on Jan. 28 and his termination on April 5.

"We originally were made aware of this situation through a comment by an employee who had some suspicions of some improprieties occurring in that department," Chief Jack Clayton of the Fairmont State University Police Department said. "At that point, we met with our finance and administration folks. did an initial investigation and found that there was some suspicious activity."

Federal documents show the government, even without charges or a conviction, went after Tamm to forfeit his home, where police executed a search warrant when the accusations of misconduct first surfaced nine months ago. The U.S. attorney for the northern district of West Virginia alleges Tamm committed mail and wire fraud over the course of several years.

This complaint alleges Tamm used his state government purchasing card to buy internet switches, which are used to connect computers. He then allegedly sold those switches for nearly \$650,000.

However, sources close to the investigation tell Eyewitness News auditors have found Tamm's alleged scheme brought him more than a million dollars from the sale of various types of state purchased technology before it was shut down.

"The purchasing card was purely a payment mechanism," West Virginia Auditor Glen Gainer said. "The fraud actually occurred by the person's position, and also the rules within the higher education on purchasing and also their inventory rules is really what aided the fraud."

This situation has been bubbling in Fairmont for more than a year. In fact, the allegations hang like a cloud over the entire Fairmont State community. Students said they expect much better behavior for their school's leaders.

"I definitely expect honesty from all of the administration," Mickala Maditz, a Fairmont State University student, said. "I expect guidance when I need it. And I expect somebody to be there, even on a personal level, having somebody there to talk to, that's definitely what I expect from them."

Gainer said it's difficult to catch someone breaking the rules if they are in a position of authority and trust. However, he said, eventually, the system will find them.

"Anytime though, you have someone who is at a very high level it makes it extremely more difficult to catch," Gainer said. "Because, once again, it's at such a high level. And the fact, too, when you're directing subordinates, sometimes subordinates may scratch their head but they're a little nervous about blowing the whistle."

Sources at Fairmont State University and Pierpont Community and Technical College told Eyewitness News that Tamm's alleged scheme could have been uncovered sooner had the university acted on a number of red flags surrounding him, including two human resources complaints alleging Tamm was behaving erratically, which were not acted upon.

However, a university spokeswoman said, as soon as news of Tamm's possible questionable activity came to light, the school acted quickly to look into the situation and relieve him of his duties.

The Higher Education system operates under different purchasing and inventory rules than every other state agency. Bid minimums are higher and items valued at less than \$5,000 are not necessarily entered into an inventory system. Those factors may have contributed to the long term operation and success of Tamm's alleged scheme.

"The controls that they have built around that limit, at least in the case of Fairmont, failed," Gainer said. "Now, if they failed at Fairmont there's a possibility that it could be failing elsewhere as well."

The chancellor of the Higher Education Policy Commission said anytime theft or fraud occurs, financial experts review what happened to see if changes need to be made to stop future theft.

"I think in those situations we're always gonna go back and look," Paul Hill, the Chancellor of the H.E.P.C. said. "We're always going to go back and review whatever reports come out of this. And we're always going to take out additional assurances, if they are warranted. If we see a pattern, if we can see where the rules might need to be improved then we have no trouble making those types of recommendations to the legislature that the rules be changed."

Tamm's alleged crimes amount to more than just stolen money. He also violated the trust of his co-workers and the students he promised to serve. And it is that trust which may ultimately take longer to repair than any auditor's tally sheet.

There are some interesting nuggets in the Verified Complaint For Forfeiture filed by the U.S. Attorney.

In the document, while talking with the FBI, Tamm disclosed that his doctor told him "he wasn't a bad person, he had just made bad decisions."

Tamm also told the FBI agent he was in the process of fixing up a relative's home, so his wife and children would have a place to stay while he was "gone".

It is important to note that as of today, no criminal charges have been filed against David Tamm. However, sources tell Eyewitness News the U.S. Attorney has prepared a plea agreement in this case that is awaiting Tamm's signature.

Federal court document lists charges against FSU official

by Matt Harvey, Assistant Managing Editor | Posted: Friday, December 13, 2013 11:33 p.m.

CLARKSBURG -- A court document was filed against Fairmont State University's chief information officer late Friday. The charging document, called an "information," was electronically filed late Friday afternoon in U.S. District Court by Assistant U.S. Attorney Andrew Cogar.

An information is an accusation or criminal charge brought by a prosecutor without a grand jury indictment.

The information names David Tamm as the defendant, and has two counts.

An attempt to contact Tamm's lawyer, Thorn H. Thorn, wasn't immediately successful Friday evening.

The filing of the information against Tamm includes a "waiver of indictment form" attached to the file.

Count One of the information filed against Tamm charges embezzlement from a state agency receiving federal funds.

It alleges wrongdoing from October 2007 until last January in Fairmont and elsewhere in the state's Northern District.

Count Two of the information charges making and subscribing a false tax return for tax year 2012.

The information also includes a forfeiture allegation. It seeks forfeiture of any property that could have been derived from proceeds traceable to a crime, "including a money judgment in the amount of at least \$550,000."

Previously, Cogar and another assistant U.S. attorney, John Parr, successfully sought the forfeiture of Tamm's Bridgeport home.

U.S. District Judge Irene M. Keeley agreed to the sale of the home, with the net proceeds to be placed in escrow as part of a federal civil action against Tamm.

In the civil filing, Cogar and Parr alleged a scheme by Tamm, also a Fairmont State vice president, to fraudulently obtain nearly \$650,000.

A prior motion by Cogar and Parr alleges an FBI investigation showed Tamm "had engaged in a multi-year scheme to commit mail and wire fraud."

The FBI investigated and learned Tamm "used state-issued government purchasing cards (P-Cards) to purchase computer switches, which he then resold for approximately \$648,500.97, which funds he obtained via interstate wire transfer," the prior motion alleged.

Between June 20, 2008, and Nov. 16, 2012, Tamm bought 302 of the computer switches, which join together several computers into what's called a local area network, the filing alleged. Tamm used various FSU employees' P-Cards to buy the switches from an electronics company in Lexington, Ky., according to the filing.

The switches ranged in cost from \$1,077 to \$5,855, the government previously alleged.

"The switches are not now located at FSU," the prior filing alleged.

From January 2008 through December 2012, wire transfers totaling the nearly \$650,000 were made to Tamm's bank account number, the prior government filing alleged. Tamm received at least 121 wire transfers during the time, with the money "traced to the sale of the fraudulently obtained computer switches," the prior filing alleged.

Additionally, Tamm "personally retrieved the FedEx shipments from (the Kentucky company) upon their arrival at FSU," the prior filing alleged.

Federal authorities raided Tamm's home April 3 using a search warrant issued by Magistrate Judge James E. Seibert, according to the prior filing.

And then on May 30, an FBI agent questioned Tamm, according to the prior filing.

"Tamm disclosed that his physician told him in reference to the investigation, that he was not a bad person, but that he just made bad decisions," the prior filing alleged.

Ex-Fairmont State official charged with embezzling

CHARLESTON, W.Va.,(AP) –A former administrator at Fairmont State University is facing federal embezzlement and tax charges.

David Tamm is charged in an information with embezzling from a state agency that received federal funds. He also is charged with filing a false income tax return.

The information alleges that Tamm fraudulently obtained university computer and communications equipment worth at least \$3,000.

Tamm also is accused of falsely reporting income on his 2012 federal income tax return.

Tamm's lawyer, Thorn H. Thorn, says his client is cooperating with investigators.

Fairmont State spokeswoman Amy Pellegrin says Tamm's employment was terminated on April 5.

Tamm had served as vice president and the university's chief information officer since 2009.

The information was filed Friday in U.S. District Court in Clarksburg. A hearing hasn't been scheduled.



**OFFICE OF THE UNITED STATES
ATTORNEY NORTHERN DISTRICT OF WEST
VIRGINIA**

**William J. Ihlenfeld, II
UNITED STATES ATTORNEY**

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Specialist

January 08, 2014
FOR IMMEDIATE RELEASE

**Former Fairmont State V-P
Convicted of Embezzlement, Tax Charges**

CLARKSBURG, WEST VIRGINIA- A former vice-president at Fairmont State University has been convicted of stealing hundreds of thousands of dollars from the school through the use of a state-issued purchasing card.

United States Attorney William J. Ihlenfeld, II announced that DAVID A. TAMM, age 45, of Parkersburg, West Virginia, entered guilty pleas today before Judge Irene M. Keeley in Clarksburg federal court to "Embezzlement from State Agency Receiving Federal Funds" and "Making and Subscribing a False Tax Return for Tax Year 2012."

TAMM, the former Chief Information Officer at the school, admitted that from October of 2007 until January of 2013, he embezzled and stole funds from Fairmont State, including funds from federal education grants. TAMM also admitted to filing a false tax return for the 2012 tax year by reporting substantially less income than he had actually received.

TAMM, who is free on bond pending sentencing, faces up to ten years in prison on the embezzlement charge and up to three years in prison on the tax charge.

"Mr. Tamm took money belonging to one of our state universities and then used it to purchase a beautiful home, luxury automobiles, and expensive jewelry for his wife," said U.S. Attorney Ihlenfeld. "This is another case of someone abusing a position of trust to live a lifestyle otherwise unobtainable on one's salary alone."

The investigation revealed that TAMM purchased hundreds of computer switches with his state purchasing card and then resold them for cash, receiving approximately \$650,000 from the scheme. TAMM also used his purchasing card to acquire high-end electronics for his personal use.

This case was prosecuted by Assistant United States Attorney Andrew R. Cogar and was investigated by the Federal Bureau of Investigation, the Internal Revenue Service, the West Virginia Commission on Special Investigations and the Fairmont State University Police.

If anyone has information regarding public corruption in their community they are encouraged to call the West Virginia Public Corruption Hotline at 1-855-WVA-FEDS (1-855-982-3337), or to send an email to wvafeds@usdoj.gov.

Former FSU official David Tamm pleads guilty to federal charges

by Matt Harvey, Assistant Managing Editor | Posted: Wednesday, January 8, 2014 1:25 pm

CLARKSBURG-For years, Fairmont State's chief information officer, David Tamm, made trips to a loading dock to pick up items that had been shipped in from a southern West Virginia company called Pomeroy.

The computer switches inside the packages helped Tamm, 45, live a lavish lifestyle at the expense of the university, buying a home on Bridgeport's Rosewood Court, and more than 20 high-end cars, according to FBI Special Agent Steven Anderson.

But Tamm's scheme, which ran from October 2007 through last January, started to unwind when Fairmont State officials noticed Tamm had been using his university purchasing card to buy electronic goods for the Rosewood Court home.

That led to an investigation by Fairmont State Police, a raid of Tamm's home by that agency, and the later involvement of the FBI, the state Commission on Special Investigations and the IRS.

Tamm since has forfeited his home, lost his chief information officer job with Fairmont State and, according to him, the last employment he had was driving around vehicles for an auto auction. He's tapped out on his credit cards --"months and months behind"-- and he's moved from Bridgeport to Parkersburg.

And on Wednesday, he may have started to hit bottom: He pleaded guilty to two federal felonies, embezzlement of computer and communications equipment worth at least \$500,000, and filing a false return for calendar year 2012.

Tamm could face up to 10 years in prison when he's sentenced at a later date by U.S. District Judge Irene M. Keeley, who accepted his pleas and ordered a presentence report that will be heavy on financial information.

Restitution, Assistant U.S. Attorney Andrew Cogar acknowledged to the court, is one of the main driving forces in the case. Tamm embezzled just under \$1.3 million, according to Special Agent Anderson.

And a separate investigation by Karen Atkinson of the IRS showed Tamm failed to pay at least \$200,000, but less than \$250,000, in taxes by not reporting the income he obtained through the sale of the switches.

The switches cost between \$4,500 and \$8,500 each, according to Stevenson. Tamm used his position at FSU to make purchase orders to Pomeroy, which shipped the

switches to a loading dock on the university campus. Most items shipped to the dock then are forwarded to other locations at the university, but Tamm went to pick these up at the dock, ostensibly to repackage them for resale to at least three other companies that the agent didn't name.

The high amount of loss may push the possible prison term to several years, and Tamm's abuse of his position of trust with FSU also will be factored, according to statements in court. Defense attorney Thorn H. Thorn may try to mitigate that somewhat by asking for a variance, although that's likely to be opposed by Cogar.

Tamm seems aware of where his life is headed in the short term. He lost his composure briefly during the plea hearing, with Keeley picking up on it and asking if he was OK to continue. But after that, Tamm regained his footing and completed the hearing that lasted more than an hour without further difficulty.

Cogar noted that the forfeiture process, which is likely to play a heavy role in restitution, will pick up steam between now and Tamm's sentencing hearing, which Keeley didn't immediately schedule.

The cars, ranging from Mercedes to Cadillacs, will be included in the forfeiture proceedings, statements in court indicated.

Wednesday's trip to federal court was the first appearance by Tamm in this case. With no opposition from the government, Keeley allowed Tamm to be freed on a personal recognizance bond.

Fairmont State University Police Chief Jack Clayton was among those attending the hearing. He was asked whether steps had been taken to prevent future occurrences such as this.

Clayton noted that he wasn't speaking for the administration, "but I would assume there would be some additional procedure to reinsure oversight."

Former Fairmont State University vice president could face at least a decade in prison

Posted: Feb 13, 2014 11:32 AM

The former Fairmont State University vice president who admitted to embezzling hundreds of thousands of dollars in state funds and falsifying his 2012 tax return could face a decade or more in prison.

U.S. Attorney William J. Ihlenfeld II said David A. Tamm, 45, used his state-issued purchasing card to purchase hundreds of computer switches, which he resold. He also used the card to buy high-end electronics for his personal use.

Tamm, who had been chief information officer at FSU, admitted that from October 2007 until January 2013 he dipped school funding, including money intended for federal education grants. He also admitted to under reporting his income in 2012.

"(He) took money belonging to one of our state universities and then used it to purchase a beautiful home, luxury automobiles, and expensive jewelry for his wife," Ihlenfeld said. "This is another case of someone abusing a position of trust to live a lifestyle otherwise unobtainable on one's salary alone."

Tamm appeared before U.S. District Judge Irene M. Keeley in Clarksburg.

Ihlenfeld said he faces up to 10 years in federal prison on the embezzling charge and three years for the tax evasion.

The case was prosecuted by Assistant U.S. Attorney Andrew R. Cogar and was investigated by the Federal Bureau of Investigation, the Internal Revenue Service, the West Virginia Commission on Special Investigations and Fairmont State University Police.

Former chief public defender among 50 indicted

By Tina Alvey
Register-Herald Reporter

LEWISBURG – The former chief public defender of the 11th Judicial Circuit was among the 50 people indicted by a Greenbrier County Grand Jury this week.

Denney William Bostic is accused of embezzling an unspecified amount of funds “placed under his care or management by virtue of his office,” according to an indictment. He is charged with making personal use of a credit card issued to him as chief public defender between March 5, 2010 and August 5, 2011.

Although the exact amount of funds Bostic allegedly embezzled is not set forth in the indictment, the document does note it is in excess of \$1,000, making the charge a felony.

Bostic voluntarily surrendered his West Virginia law license in October 2011 after leaving the Public Defender’s office. As the supporting affidavit for his disbarment remains under seal, it is not clear if the embezzlement alleged in Tuesday’s indictment figured into Bostic’s consent to relinquish his law license.

Monroe county Assistant Prosecuting Attorney Kristin R. Cook presented the case to the Greenbrier Grand Jury.

Former chief public defender pleads not guilty to embezzlement

By Tina Alvey Register-Herald Reporter

LEWISBURG — The former chief of the 11th Judicial Circuit's Public Defender office was arraigned Tuesday, pleading not guilty to an embezzlement charge.

Denney William Bostic, 54, is accused of making personal use of a credit card issued to him as chief public defender for a circuit that includes Greenbrier and Pocahontas counties.

The alleged embezzlement took place between March 5, 2010, and Aug. 5, 2011, according to a felony indictment returned by a Greenbrier County grand jury earlier this month. The indictment puts the amount of money at issue at more than \$1,000, but does not specify an exact amount.

Now living with his sister in Wilmington, N.C., Bostic appeared in court without legal representation Tuesday afternoon but with an affidavit in hand requesting the court appoint counsel to represent him.

Asked by special Judge John Hrko, "Are you a lawyer?" a subdued Bostic responded, "I was."

The defendant explained to the judge, "I voluntarily surrendered my license, your honor."

Bostic gave up his law license in October 2011 after leaving the Public Defender's office.

When Hrko further asked if Bostic would have any problem with someone from the Public Defender's office being appointed to represent him in the matter currently before the court, Bostic said, "I would say they have a problem with that. I was (at one time) the boss over everyone in that office."

Ultimately, Hrko, a senior status judge who was appointed to hear this case June 11, appointed E. Lavoyd Morgan Jr. to represent Bostic.

"I've got a good professional relationship with him," Bostic told the court.

The appointment of counsel raised a new problem, however, as Hrko told Bostic, "Now

that I've appointed counsel for you, I feel just a little bit uncomfortable arraigning you without him here."

Fortunately, Morgan was scheduled to be in court representing another client later in the afternoon and a cell phone call from the courtroom by special Prosecutor Justin St. Clair brought the attorney to the courthouse posthaste, allowing the arraignment to proceed.

After conferring with his attorney, Bostic waived the reading of the indictment and entered a plea of not guilty to the embezzlement charge.

The judge explained that the penalty, if Bostic were convicted of the felony offense as charged, would be one to 10 years in the penitentiary or, at the court's discretion, up to one year in a regional jail and a \$2,500 fine.

Upon the prosecutor's recommendation, Hrko set a personal recognizance bond in the amount of \$5,000 for Bostic.

"It's kind of obvious (Bostic) will appear; he appeared here today," Hrko commented in setting bond.

Having been assured the Greenbrier County Circuit Court docket would allow such prompt scheduling of proceedings, the judge set a pre-trial date of Sept. 13 and a trial for Sept. 30, but also addressed the possibility of the two sides reaching a plea agreement.

Hrko promised a swift response to such an agreement, with the caveat that the plea hearing must be held in Greenbrier County, where the charges were brought.

— *E-mail: talvey@register-herald.com*

Former Nicholas 911 Director charged

SUMMERSVILLE – The former director of the Nicholas County Office of Emergency Services has been charged with using a county credit card for her own use.

State Police said 42-year-old Carla Hennessey of Craigsville was charged Monday with one count of fraudulent schemes. She was arraigned in Nicholas County Magistrate Court and released on bond.

Court records didn't list an attorney for Hennessey.

State Police spokesman Lt. Michael Baylous said in a statement that the amount involved was \$1,735. It didn't specify the items allegedly purchased.

In 2008, Nicholas County Emergency Services Director Alfonso DeRito Jr. resigned and was sentenced the following year to probation and community service after being charged with mispending more than \$500 in county money.

Appendix B

Powers & Duties of the Commission

**CHAPTER 4.
THE LEGISLATURE.**

**ARTICLE 5.
COMMISSION ON SPECIAL INVESTIGATIONS.**

§4-5-1. Commission continued as "commission on special investigations"; composition; appointment and terms of members.

The purchasing practices and procedures commission, heretofore created, shall continue in existence but on and after the effective date of this section shall be named and designated the "commission on special investigations." The commission shall continue to be composed of five members of the Senate, to be appointed by the president thereof, no more than three of whom shall be from the same political party; and five members of the House of Delegates, to be appointed by the speaker thereof, no more than three of whom shall be appointed from the same political party: **Provided**, That in the event the membership of a political party is less than fifteen percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than fifteen percent membership may be one from that house. The commission shall be headed by two cochairmen, one to be selected by and from the members appointed from the Senate, and one to be selected by and from the members appointed from the House of Delegates. All members of the commission shall serve until their successors shall have been appointed as heretofore provided.

§4-5-2. Powers and duties generally.

(a) The Commission on Special Investigations shall have the power, duty and responsibility, upon a majority vote of the members appointed, to:

(1) Conduct a comprehensive and detailed investigation into the purchasing practices and procedures of the state;

(2) Determine if there is reason to believe that the laws or public policy of the state in connection with purchasing practices and procedures have been violated or are inadequate;

(3) Determine if any criminal or civil statutes relating to the purchasing practices and procedures in this state are necessary to protect and control the expenditures of money by the state;

(4) Investigate or examine any matter involving conflicts of interest, bribery of state officials, malfeasance, misfeasance or nonfeasance in office by any employee or officer of the state;

(5) Conduct comprehensive and detailed investigations to determine if any criminal or civil statutes have been violated at any level of state government;

(6) Determine whether to recommend criminal prosecution or civil action for any violation, either criminal or civil, at any level of state government and, if it is determined that action is

necessary, to make appropriate recommendation to the Attorney General, prosecuting attorney or other authority empowered to act on such recommendation; and

(7) Make such written reports to the members of the Legislature between sessions thereof as the commission may deem advisable and on the first day of each regular session of the Legislature make an annual report to the Legislature containing the commission's findings and recommendations including in such report drafts of any proposed legislation which it deems necessary to carry such recommendations into effect.

(b) The commission is also expressly empowered and authorized to:

(1) Sit during any recess of the Senate and House of Delegates;

(2) Recommend to the judge of any circuit court that a grand jury be convened pursuant to the provisions of section fourteen, article two, chapter fifty-two of this code, to consider any matter which the commission may deem in the public interest and, in support thereof, make available to such court and such grand jury the contents of any reports, files, transcripts of hearings or other evidence pertinent thereto;

(3) Employ such legal, technical, investigative, clerical, stenographic, advisory and other personnel as it deems needed and, within the appropriation herein specified, fix reasonable compensation of such persons and firms as may be employed: *Provided*, That such personnel as the commission may determine shall have the authority to administer oaths and take affidavits and depositions anywhere in the state.

(4) Consult and confer with all persons and agencies, public (whether federal, state or local) and private, that have information and data pertinent to an investigation; and all state and local governmental personnel and agencies shall cooperate to the fullest extent with the commission;

(5) Call upon any department or agency of state or local government for such services, information and assistance as it may deem advisable; and

(6) Refer such matters as are appropriate to the office of the United States attorney and cooperate with such office in the disposition of matters so referred.

(c) Notwithstanding any provision of this code to the contrary, specific personnel may be designated by the commission to carry a firearm in the course of performing his or her official duties: *Provided*, That as a precondition of being authorized to carry a concealed weapon in the course of their official duties, any such designated personnel must have first successfully completed a firearms training and certification program which is equivalent to that which is required of members of the state police. The designated persons must also possess a license to carry a concealed deadly weapon in the manner prescribed in article seven, chapter sixty-one of this code.

§4-5-3. Executive sessions; hearings; subpoena power; enforcement provisions.

The commission shall have the power and authority to hold executive sessions for the purpose of establishing business, policy, an agenda and the interrogation of a witness or witnesses: *Provided*, That if a witness desires a public or open hearing he shall have the right to demand the same and shall not be heard otherwise: *Provided, however*, That if a witness desires a hearing in an executive session, he shall have the right to demand the same and shall not be heard otherwise. However, members of the staff of the commission may be permitted to attend executive sessions with permission of the commission.

The commission is hereby empowered and authorized to examine witnesses and to subpoena such persons and books, records, documents, papers or any other tangible things as it believes should be examined to make a complete investigation. All witnesses appearing before the commission shall testify under oath or affirmation, and any member of the commission may administer oaths or affirmations to such witnesses. To compel the attendance of witnesses at such hearings or the production of any books, records, documents, papers or any other tangible thing, the commission is hereby empowered and authorized to issue subpoenas, signed by one of the cochairmen, in accordance with section five, article one, chapter four of this code. Such subpoenas shall be served by any person authorized by law to serve and execute legal process and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

If any person subpoenaed to appear at any hearing shall refuse to appear or to answer inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers or any other tangible thing within his control when the same are demanded, the commission shall report the facts to the circuit court of Kanawha county or any other court of competent jurisdiction and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance.

§4-5-4. Compensation and expenses of members; other expenses; how paid; joint committee approval.

The members of the commission shall receive travel, interim and out-of-state expenses, as authorized in sections six, eight and nine, article two-a, chapter four of this code. Such expenses and all other expenses including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from the appropriation under "Account No. 103 for Joint Expenses," but no expense of any kind whatever shall be incurred unless the approval of the joint committee on government and finance therefor is first had and obtained by the commission.

§4-5-5. Investigations exempt from public disclosure requirements.

The investigations conducted by the commission and the materials placed in the files of the commission as a result of any such investigation are exempt from public disclosure under the provisions of chapter twenty-nine-b of this code.

§4-5-6. False statements to commission.

(a) A person is guilty of making a false statement to the commission on special investigations when:

(1) Such person, with the intent to impede the commission or to impede an investigator of the commission acting in the lawful exercise of his or her official duties, knowingly and willfully makes any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry;

(2) Such statement, representation, writing or document is made or given to the commission or an investigator of the commission acting in the lawful exercise of his or her official duties; and

(3) The misrepresentation is material.

(b) The provisions of subsection (a) of this section are not applicable to a person in the relation of husband and wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity, of an individual who is the subject of an investigation by the commission.

(c) Any person who violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or confined in jail for not more than one year, or both, in the discretion of the court.

Appendix C

Rules of the Commission

**RULES OF THE
COMMISSION ON SPECIAL INVESTIGATIONS
WEST VIRGINIA LEGISLATURE**

Section 1. Establishment and Purpose of Rules.

A code of fair procedure for the Commission on Special Investigations is hereby established for the purpose of providing for the operation of this Commission in a manner which will enable it to perform properly the powers and duties vested in it, including the conduct of hearings, in a fair and impartial manner, consistent with protection of the constitutional rights of persons called to testify at such hearings and preservation of the public good.

Section 2. Definitions.

As used in these rules:

1. "Commission" means the Commission on Special Investigations as enacted by the Legislature at the regular session 1980.

2. "Hearing" means any meeting in the course of an investigatory proceeding (other than a preliminary conference or interview at which no testimony is taken under oath) conducted by the Commission for the purpose of taking testimony or receiving other evidence. A hearing may be open to the public or closed to the public.

3. "Public hearing" means any hearing open to the public, or the proceedings of which are made available to the public.

Section 3. Quorums and Voting.

(a) A quorum shall consist of a majority of the total authorized membership of the Commission.

(b) No action shall be taken by the Commission at any meeting unless a quorum is present. The Commission may act only by a majority vote of the total membership of the Commission.

Section 4. Hearings.

(a) The Commission may hold hearings appropriate for the performance of its duties, at such times and places as the Commission determines.

(b) Each member of the Commission shall be given at least three days' written notice of any hearing to be held when the Legislature is in session and at least seven days' written notice of any hearings to be held when the Legislature is not in session. Such notices shall include a statement of the subject matter of the hearing. A hearing and any action taken at a hearing, shall

not be deemed invalid solely because notice of the hearing was not given in accordance with this requirement.

(c) The Commission shall not conduct a hearing unless a quorum is present.

Section 5. Issuance of Subpoenas.

(a) The Commission, by majority vote of the members present, may issue a subpoena requiring a person to appear before the Commission and be examined in reference to any matter within the scope of the inquiry or investigation being conducted by the Commission. The Commission also may issue a subpoena or subpoena duces tecum requiring any person to appear before the Commission and bring with him any books, records, documents and such other papers pertinent thereto.

(b) A person subpoenaed to attend a hearing of the Commission shall receive the fees and allowances as provided for in sections sixteen and seventeen, article one, chapter fifty-nine of the Code.

Section 6. Notice to Witnesses.

(a) Service of a subpoena requiring the attendance of a person at a hearing of the Commission shall be made in the manner provided by law, including the Rules of Civil Procedure, for the service of subpoenas in civil actions, except that the subpoenas shall be served without charge. Service shall be made at least seven days prior to the date of the hearing unless a shorter period of time is authorized by majority vote of the members present of the Commission in a particular instance when, in their opinion, the giving of seven days' notice is not practicable; but if a shorter period of time is authorized, the person subpoenaed shall be given reasonable notice of the hearing, consistent with the particular circumstances involved.

(b) Any person who is served with a subpoena to attend a hearing of the Commission also shall be served with a copy of the resolution establishing the Commission, a copy of the rules under which the Commission functions, a general statement informing him of the subject matter of the Commission's investigation or inquiry and a notice that he may be accompanied at the hearing by counsel of his own choosing.

Section 7. Conduct of Hearings.

(a) All hearings of the Commission shall be public unless the Commission, by majority vote of the members present, determines that a hearing should not be open to the public in a particular instance; provided, however, that if a witness desires a hearing in an executive session, he shall have the right to demand the same and shall not be heard otherwise. However, members of the staff of the Commission may be permitted to attend executive sessions with permission of the Commission.

(b) The cochairman on the part of the Senate, if present and able to act, shall preside at all hearings of the Commission and shall conduct the examination of witnesses himself or permit

examination by other members of the Commission's staff who are so authorized. In his absence or disability, the cochairman on the part of the House shall serve as presiding officer. Selection of a presiding officer to act in the absence or disability of both cochairmen shall be by majority vote of the members present at a meeting at which there is a quorum.

(c) No hearing, or part thereof, shall be televised, filmed or broadcast except upon approval of the Commission, by majority vote of the members present.

Section 8. Right to Counsel and Submission of Questions.

(a) Every witness at a hearing may be accompanied by counsel of his own choosing, who may advise the witness as to his rights, subject to reasonable limitations which the Commission may prescribe to prevent obstruction of or interference with the orderly conduct of the hearing.

(b) Any witness at a hearing, or his counsel, may submit to the Commission proposed questions to be asked of the witness or any other witness relevant to the matters upon which there has been any questioning or submission of evidence, and the Commission shall ask such of the questions as are appropriate to the subject matter of the hearing.

Section 9. Testimony.

(a) The Commission shall cause a record to be made of all proceedings in which testimony or other evidence is demanded or adduced, which record shall include rulings of the chair, questions of the Commission and its staff, the testimony or responses of witnesses, sworn written statements submitted to the Commission, and such other matters as the Commission may direct.

(b) All testimony given or adduced at a hearing shall be under oath or affirmation unless the requirement is dispensed within a particular instance by majority vote of the Commission members present at the hearing.

(c) Any member may administer an oath or affirmation to a witness at a hearing.

(d) The presiding officer at a hearing may direct a witness to answer any relevant question or furnish any relevant book, paper or other document, the production of which has been required by a subpoena duces tecum. Unless the direction is overruled by majority vote of the Commission members present, disobedience shall constitute a contempt.

(e) A witness at a hearing or his counsel, with the consent of a majority of the Commission members present at the hearing, may file with the Commission for incorporation into the record of the hearing sworn written statements relevant to the purposes, subject matter and scope of the Commission's investigation or inquiry.

(f) A witness at a hearing, upon his request and at his own expense, shall be furnished a certified transcript of his testimony at the hearing.

(g) Testimony and other evidence given or adduced at a hearing closed to the public shall not be made public unless authorized by majority vote of the members of the Commission who are present, which authorization shall also specify the form and manner in which the testimony or other evidence may be released.

(h) All information of a defamatory or highly prejudicial nature received by or for the Commission other than in an open or closed hearing shall be deemed to be confidential. No such information shall be made public unless authorized by majority vote of the members of the Commission who are present for legislative purposes, or unless its use is required for judicial purposes.

Section 10. Interested Persons.

(a) Any person whose name is mentioned or who is otherwise identified during a hearing of the Commission and who, in the opinion of the Commission, may be adversely affected thereby, may, upon his request or upon the request of any members of the Commission, appear personally before the Commission and testify in his own behalf, or, with the Commission's consent, file a sworn written statement of facts or other documentary evidence for incorporation into the record of the hearing.

(b) Upon the consent of a majority of the members present, the Commission may permit any other person to appear and testify at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record thereof. No request to appear, appearance or submission of evidence shall limit in any way the Commission's power of subpoena.

(c) Any person who appears before the Commission pursuant to this section shall have all the rights, privileges and responsibilities of a witness provided by these Rules.

Section 11. Presiding Officer.

The cochairman on the part of the Senate, if present and able to act, shall preside at all meetings of the Commission. In his absence or disability, the cochairman on the part of the House shall preside. Selection of a presiding officer to act in the absence or disability of both cochairmen shall be by majority vote of the members present at a meeting at which there is a quorum.

Section 12. Contempt.

(a) A person shall be in contempt if he:

1. fails or refuses to appear in compliance with a subpoena or, having appeared, fails or refuses to testify under oath or affirmation;

2. fails or refuses to answer any relevant question or fails or refuses to furnish any relevant book, paper or other document subpoenaed by or on behalf of the Commission; or

3. commits any other act or offense against the Commission which, if committed against the Legislature or either house thereof, would constitute a contempt.

(b) The Commission may, by majority vote of the members present, authorize the taking of such steps as are necessary under law to obtain a contempt citation in such cases.

Section 13. Meetings.

Meetings of the Commission, other than hearings, shall be held upon call of either cochairman or upon majority vote of the members present. Unless otherwise directed by majority vote of the members present, such meetings will be held at the State Capitol.

Section 14. Limitation of Rules.

Nothing contained in these Rules shall be construed to limit or prohibit the acquisition of evidence or information by the Commission by any lawful means not provided for herein.