

July 1, 2014 - June 30, 2015

Thirty-fifth Annual Report



West Virginia Legislature's
Commission on Special
Investigations

William P. Cole III - President of the Senate

Tim Armstead – Speaker of the House

West Virginia Commission on Special Investigations

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Mission Overview

The Mission of the Commission on Special Investigations is broadly outlined under Chapter 4, Article 5 of the West Virginia State Code 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 55 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 currently comprised of a Director, Deputy Director, two Senior Investigators, three Investigators and an Administrative Assistant. The law enforcement and investigative experience of individual investigators ranges from 25 to 42 years. 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.

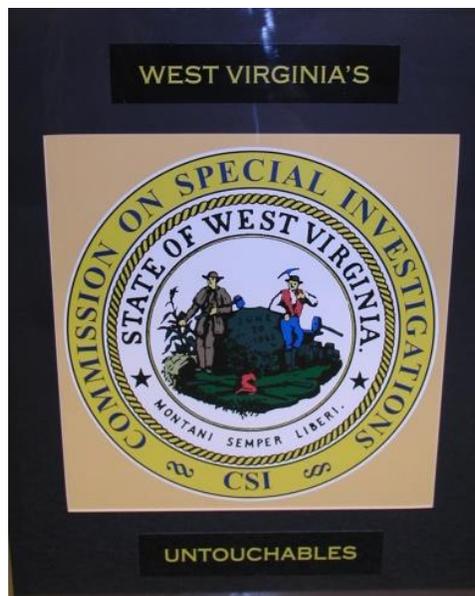
The Commission is comprised of ten members of the Legislature, with the President of the Senate and Speaker of the House of Delegates currently serving as its co-chairmen. The other eight members (four from the Senate and four from the House) represent both political parties. Meetings are conducted during interim sessions of the Legislature and are generally held 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 has remained beyond the reach of the political influence of either the Executive or Legislative branches of government.

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. While some investigations are completed in short order, it is not unusual for CSI matters to remain open for weeks, months and, at times, years.

Many 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.



Commission Members

§4-5-1

“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 investigative 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

William P. Cole III (R)
President of the Senate

Co-Chairman – Commission on
Special Investigations
Joined the Commission – 2015



Tim Armstead (R)
Speaker of the House

Co-Chairman – Commission on
Special Investigations
Commission Member 2007-09
Rejoined the Commission - 2015



Mike Hall (R)

Joined the Commission – 2010



Mick Bates (D)

Joined the Commission - 2015



Jeffrey V. Kessler (D)
Minority Leader

Joined the Commission – 2011



Patrick Lane (R)

Joined the Commission - 2009



Charles S. Trump (R)

Commission Member 1993-2007
Rejoined the Commission – 2015



Tim Miley (D)
Minority Leader

Joined the Commission - 2013



Mike Woelfel (D)

Joined the Commission – 2015



John Shott (R)

Joined the Commission - 2015



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.”

Commission Staff designated as “Investigator” are issued special identification credentials including photo identification and Commission badges. Investigators are also authorized to carry firearms in the performance of their duties.



Charles R. Bedwell – Director

Joined Commission Staff in 2003

32 years

Law Enforcement/Investigative Experience



James S. Powers – Deputy Director

Joined Commission Staff in 2002

39 years

Law Enforcement/Investigative Experience

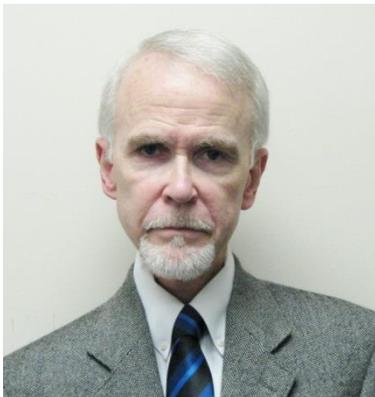


Steven E. Staton – Senior Investigator

Joined Commission Staff in 1999

42 years

Law Enforcement/Investigative Experience



Roy M. Hutchison – Senior Investigator

Joined Commission Staff in 2001

41 years

Law Enforcement/Investigative Experience



Rick D. Eplin – Investigator

Joined Commission Staff in 2014

29 years

Law Enforcement/Investigative Experience



Michael G. Robinson – Investigator

Joined Commission Staff in 2015

25 years

Law Enforcement/Investigative Experience



Herbert Shelton III – Investigator

Joined Commission Staff in 2015

30 years

Law Enforcement/Investigative Experience



Lisa M. Wilkinson

Administrative Assistant

Joined Commission Staff in 1985

30 years State Service

Staff Investigators are responsible for conducting comprehensive and detailed investigations on behalf of the West Virginia Legislature 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.

Commission Receives Award



On May 11, 2015, Commission Director Charles Bedwell and Deputy Director James Powers attended a ceremony where they received, on behalf of the Commission, a 2015 United States Attorney Award, presented by the US Attorney for the Northern District of West Virginia, William J. Ihlenfeld, II.

The award, bearing the insignia of the United States Attorney is inscribed:

“United States Attorney William J. Ihlenfeld, II

Northern District of West Virginia

Presents the

2015 Outstanding Investigative Effort Award

To the

WEST VIRGINIA COMMISSION

ON SPECIAL INVESTIGATIONS

In recognition of its ongoing pursuit of justice,

its outstanding contributions in the field

of law enforcement, and for protecting

the citizens of West Virginia”

Recognition of Retired Deputy Director

Herbert R. Cogar

Staff Member 06/16/1992 – 10/31/2014



Herbert R. Cogar, native West Virginian and resident of Gassaway, Braxton County, West Virginia, served the Commission on Special Investigations with unparalleled distinction as both a lead Investigator and Deputy Director. Herb, a graduate of Braxton County High School, joined the United States Army in 1972 and married Rebecca Long, his high school sweetheart. He served his Country with distinction as a military policeman and recruiter before his honorable discharge in 1979.

Upon the completion of his military career, Herb returned home to West Virginia where he accepted a position as a Landman and Project Manager for Upshur Agency, Inc., a West Virginia business specializing in land and Right-of-Way acquisition for a variety of clientele. Circa 1984, Herb rejoined the ranks of law enforcement as a Criminal Investigator for the West Virginia State Department of Tax and Revenue.

Herb, noted for his investigative expertise with the Tax Department, was actively recruited by Special Investigations and accepted a position with the agency in 1992. For the next 22 years, Herb served as a Criminal Investigator for the Commission, where he investigated major financial crimes and public corruption, and other violations of both State and Federal laws. Herb's reputation as a tenacious and deliberate Investigator allowed him to develop close working relationships with local, State and Federal law enforcement agencies as well as State and Federal prosecutors. His unique ability to "out think" investigative targets resulted in countless successful investigations and prosecutions of public corruption, many involving theft of public monies and betrayal of the public trust.

Herb accepted the responsibility of lead investigator on many of the Commission's most difficult cases and actively worked to mentor less experienced Commission staff. He worked diligently to move the agency forward in the area of automation and technology, and became the "go to" man for all Commission information system issues.

Throughout his investigative career, Herb earned the respect and admiration of law enforcement colleagues, State and Federal prosecutors, and legislators for his wisdom, resourcefulness and professionalism. Among his many recognitions and awards was the **United States Attorney Award** in 2010 for his contribution to the successful prosecution of Sequelle Communications Alliance, Inc. officers and subcontractors, who had misappropriated millions of dollars in Federal and State funds. In 2014, Governor Earl Ray Tomblin bestowed Herb with the **Distinguished West Virginian Award** in recognition of his exemplary service to the State. The Commission recognized Herb's contributions with a plaque displaying his badge and a special "Certificate of Recognition."

Although a dedicated and hard-working public servant, Herb's family is, and always has been, his first priority. He takes great pride in his son, Andrew, who often works with the Commission in his capacity as an Assistant U.S. Attorney in Clarksburg, West Virginia, and he is an eager and talented babysitter for his four grandchildren--Abigail, Jackson, Austin and Juliette.

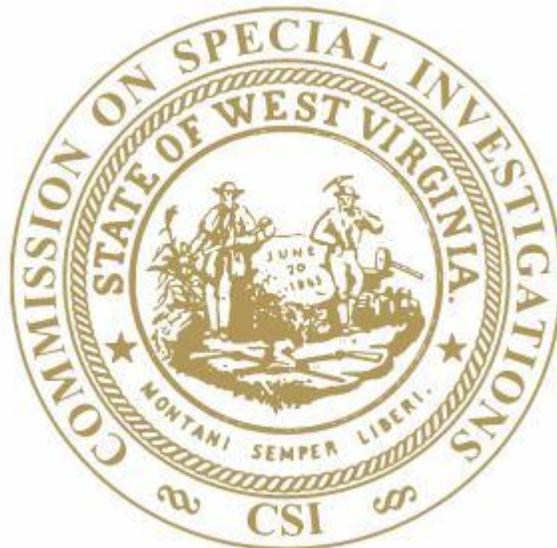
Herbert R. Cogar retired as Deputy Director of the Commission in October, 2014. His unique skills, guidance and friendship are missed by all. We wish him well as he enjoys retirement.



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 extraordinary 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 those listed on the following page.



Individual Acknowledgments

William J. Ihlenfeld II, United States Attorney, WVND

Booth Goodwin, United States Attorney, WVSD

Andrew R. Cogar, Assistant US Attorney, WVND

Jared J. Douglas, Assistant US Attorney, WVND

Sarah Mortoro, Assistant US Attorney WVND

Amy L. Mann, Prosecuting Attorney – Summers County

Keith Randolph, Prosecuting Attorney – Boone County

Kristin Cook, Assistant Prosecuting Attorney – Summers County

Patrick Lefebure, Assistant Prosecuting Attorney – Wood County

Robert W. Schulenberg III, Assistant Prosecuting Attorney – Kanawha County

S/A Fredrick Aldridge, FBI – Clarksburg

S/A Stephen Wilburn, US Department of Labor, Office of Inspector General

Sergeant L. K. Boytek, WV State Police - BCI

Corporal J.W. Smith, WV State Police – BCI

Trooper S. D. Cook, WV State Police - Parkersburg

Tim Butler, WV State Auditor, Director of Purchasing Card Program Oversight

Activities of the Commission

July 1, 2014 – June 30, 2015

During this fiscal year, the Commission on Special Investigations opened 19 investigative files and closed 15. Additionally the Commission Staff conducted preliminary inquiries into numerous allegations or suspicions of wrongdoing, determining there was no basis for an in-depth investigation, there was insufficient information to proceed or the matter was resolved prior to a file being formally opened. An additional 12 matters were identified for possible investigation and deferred for possible future action. Other matters previously opened for investigation that had not been finalized remained open /active files and investigation of those matters continued.

The Commission met in executive session a total of eight 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, governmental employees, and 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, or when investigative leads are exhausted or it is determined no evidence of wrongdoing is identified, the file 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, even though 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.

WVU – Parkersburg – Purchasing Card Fraud

In December 2013, CSI received information from the State Auditor's Purchasing Card Program Oversight office that they were looking at possible Purchasing Card misuse at West Virginia University – Parkersburg (WVU-P).

CSI opened a matter on the issue and began an in-depth investigation in cooperation with the Auditor's P-Card Oversight office. The P-Card Oversight office compiled

considerable information regarding suspicious purchases made by and at the direction of WVU-P Purchasing Clerk Kevin Offenberger.

Investigators learned Offenberger, who was no longer a University employee at the time this investigation was initiated, originally came under suspicion by WVU-P administrators when a rental vehicle he had rented using his University Purchasing Card was returned damaged and the rental company contacted the University in an effort to obtain insurance information to effect repairs to the vehicle. The University determined the rental was unauthorized and appeared to be for Offenberger's personal use and unrelated to University business. This revelation led to additional scrutiny of Offenberger's activities and ultimately to this investigation.

Using the P-Card Oversight office's data as a starting point, CSI Investigators were able to reconstruct an extensive record of specific fraudulent purchases, including purchase dates, vendors, purchase charges and item descriptions for numerous personal purchases made by Offenberger and charged on his issued WVU-P Purchasing card. Investigators were able to document 455 fraudulent transactions made by Offenberger over a five year period, totaling in excess of \$52,000.

Fraudulent purchases were made from a variety of vendors, including Wal-Mart, Lowe's, Enterprise Rent-A-Cars, Amazon and others. Items purchased included gasoline, repairs and tires for Offenberger's personal vehicles, a riding lawn mower with trailer to transport it, a Nikon camera, licensed sports items, golf clubs, jewelry, clothing, fast food restaurant gift cards and multiple family vacations.

With the assistance of Patrick Lefebure, Assistant Wood County Prosecuting Attorney and in cooperation with the West Virginia State Police – Parkersburg Detachment, a search warrant was obtained, and executed, resulting in the recovery of many of the fraudulently purchased items from Offenberger's residence. Contemporaneous with the search, Offenberger was arrested on a Felony charge of Fraudulent Use of a Purchasing Card.

In January 2015, Offenberger entered into a plea agreement in Wood County Circuit Court to one Felony count of Fraudulent Scheme, and one Felony count of Unauthorized Use of a Purchasing Card. He was sentenced to one to ten years for the Fraudulent Scheme and one to five years for the Purchasing Card violation, both sentences to run concurrently, suspended for five years' probation and a mandatory 30 days in jail. Additionally, Offenberger was ordered to pay WVU-P \$52,380.58 in restitution.

Hinton Little League – Embezzlement and Fraudulent Scheme

In July 21014, CSI received a request to assist the Hinton, WV Police Department with an investigation of a possible embezzlement of funds from the Hinton Little League. When resources permit, CSI at times lends investigative assistance to law enforcement agencies that may lack the experience and/or resources to fully investigate and develop “white collar” types of crimes. In this particular instance the request was honored and a CSI Senior Investigator was assigned to provide assistance. While advising the Hinton Police Investigator, the CSI Investigator quickly realized that City monies were likely involved in the embezzlement and moved from an advisory role to active participation in the matter.

With the support of Summers County Prosecutor Amy Mann and Assistant Summers County Prosecutor Kristin Cook, grand jury subpoenas for the Little League bank records were obtained and interviews were conducted. A detailed review of the bank and other financial records by the joint investigative team, along with information obtained during numerous interviews, resulted in the CSI Investigator presenting the case before the Summers County Grand Jury. A true bill of indictment was returned March 3, 2015 on Kimberly Huffman, the Hinton Little League Treasurer, for one count of Embezzlement of more than \$1,000 and one count of Fraudulent Schemes for depriving the Hinton Little League of \$4,739.43. That indictment currently awaits prosecution.

While conducting this investigation the CSI Investigator discovered additional criminal activity and a secondary investigation was initiated.

Summers County Family Resource Network – Embezzlement and Falsifying Sworn Statement of Grant Expenditures

This investigation resulted from information discovered during the previously detailed investigation of the **Hinton Little League – Embezzlement**.

While researching records associated with the Hinton Little League Treasurer, Investigators discovered suspicious activity regarding the Summers County Family Resources Network (SCFRN).

The SCFRN is a not-for-profit organization, funded through grants administered by the West Virginia Department of Health and Human Resources (WVDHHR). The SCFRN’s purpose, as stated in the Family Resource Network Directory, as published by the WVDHHR, is “...engaging the community in strengthening and empowering families, by developing a coordinated and responsive network of services.”

Using a series of 21 grand jury subpoenas issued by the Summers County Prosecutor, Investigators obtained documents revealing the possible falsification of insurance documents used to support certain grant requests submitted on behalf of the SCFRN and other suspicious activity. Investigators also found indications that personal loans were repaid using SCFRN funds and that SCFRN funds were used to fund a vacation cruise by reimbursing charges to a non-SCFRN credit card.

This investigation is complete and scheduled for presentation to the Summers County Grand Jury in August, 2015.

WV Division of Highways (US Attorney's Task Force)

The US Attorney's Office for the Northern District of WV, under the direction of William J. Ihlenfeld II, US Attorney, formed its Public Corruption Task Force in August 2012, consisting of representatives from the FBI, IRS-CID, GSA-OIG, WV State Police, and Investigators from the Commission on Special Investigations. Shortly thereafter, information was received relating to illegal activities involving the WV Division of Highways, Equipment Division, and MoTrim, Inc., a manufacturer of mowing equipment situated in Cambridge, Ohio. Specifically implicated in the initial allegations were Robert "Bob" Andrew of the WV DOH, and MoTrim, Inc.

A lengthy period of investigation and research ensued culminating with Federal search warrants being served simultaneously at the Equipment Division in Buckhannon, WV, and at the MoTrim facility in Cambridge, Ohio. Large quantities of records were seized from both locations, and a multitude of on-site interviews were conducted. After digital images were captured, the original records were returned to the two entities from which they were seized.

The investigation continued for many months which were consumed by in-depth records analysis, numerous witness interviews, the gathering of additional records, and appearances by witnesses before the Federal Grand Jury.

In February 2014 then DOH employee Barry Thompson was arrested for making false statements to Federal investigators. In March 2014, then DOH employee Matt Tuttle was arrested on the same charge. The investigation continued, and Tuttle pled guilty in Federal court in August 2014, while Thompson pled to a lesser charge in State court in October.

Intensive efforts over the spring and early summer of 2015 were culminated in the US Attorney's office receiving permission from the US Department of Justice to pursue indictment of additional targets for violation of the Racketeer Influenced and Corrupt

Organizations Act (RICO); Wire Fraud; Mail Fraud; Causing the Theft of Government Property; Document Tampering and Witness Tampering.

As of June 30th, the investigation continues and Federal Grand Jury testimony by Investigators is anticipated for July-August, 2015.

WV Department of Natural Resources – Wildlife Division – Purchasing Card Fraud

This case came to CSI as a referral from Mr. Tim Butler, Director of Program Oversight, Purchasing Card Program, of the WV State Auditor's office, and involved the possible misuse of a State Purchasing Card by WVDNR employee David Smith. Smith was a 35 year employee of the Wildlife Division of the WV Department of Natural Resources, and was classified as an Engineering Technician, working from DNR Headquarters in South Charleston. As such, he was responsible both for maintenance and construction at various DNR facilities throughout the State.

CSI Investigators began an intensive investigation that required the gathering of numerous records including invoices and payment records, multiple interviews and extensive travel to work locations intricately involved in the fraudulent schemes. A special cooperation by the WV State Police Bureau of Criminal investigations was needed to culminate part of the investigation that involved an undercover operation.

The crimes David Smith was ultimately arrested and indicted for relate to construction of a large eight bay garage/storage building upon the grounds of the Palestine Hatchery in Wirt County. Construction of this facility began in 2011, and was pursued in conjunction with construction personnel from the Tygarts Valley Conservation District in Philippi, which provided both staffing and equipment for the project.

During the course of the project, David Smith purchased two man lifts through Tygart's Valley on behalf of the WV Department of Natural Resources. The invoices for payments on these machines were disguised as equipment rental when in reality they were for illegal lease-purchase payments. Acquisition of this equipment was consummated absent competitive bidding and contrary to WV Code.

David Smith's son, Jordan Smith, was also involved in the scheme. David Smith caused the Tygarts Valley Conservation District to hire his son for a period of time, and also paid his son for various items or services allegedly provided by the son to the DNR. The son was a student at the WVU College of Law at the time.

In June 2013, David Smith attempted to sell a large man lift to undercover officers from the WV State Police. Both David Smith and his son were present at the time of this

transaction and were directly involved, with his son purporting to be the lawful owner of the machine. At the time Smith was driving his assigned State (WVDNR) vehicle.

As a result of the undercover buy, David Smith was arrested by the WV State Police for one count of embezzlement. Shortly thereafter, DNR officials recovered a large amount of tools and equipment from the Smith residence.

In February 2015, an Administrative Law Judge for the State Grievance Board heard a grievance petition from David Smith alleging he was improperly terminated by the WV DNR. The Administrative Law Judge denied David Smith's Level IV grievance. This decision was based largely on the testimony of Smith's supervisor at DNR and the lead CSI Investigator.

This case was initially indicted (David Smith only) in February 2014, but languished for an extended period of time. Under the new administration of Chuck Miller, Kanawha County Prosecutor, Assistant Kanawha County Prosecuting Attorney Robert W. Schulenberg III re-indicted the case in January 2015, with both David Smith, and his son, Jordan Smith, indicted for 22 felony counts of embezzlement and misuse of a State purchasing card. The case was set for trial in June 2015, but was continued, and is currently scheduled for trial in November 2015.

Unlicensed Surveyor – Fraudulent Certifications

In September 2014, CSI received information that an unlicensed person was performing property surveys under the name and official seal of a deceased licensed surveyor. Upon contacting the WV Board of Professional Surveyors CSI learned that agency was aware of the situation and had compiled some information and data regarding the matter.

According to the Board, an unlicensed person had been using, for an extended period of time, the name and licensing information of former licensed surveyor David E. Thomas. Thomas' license expired in 2009 and the Board had determined he was now deceased, having died in 2012.

According to Board records, the unlicensed surveyor had attempted to renew Thomas' license in 2011, however, the Board refused the renewal application as they had information that Thomas was no longer an active surveyor and was not associated any longer with the unlicensed surveyor or his company. It appeared Thomas was the original owner of the company and when he left the business, his business partner simply continued business as usual, by exercising Thomas' credentials and official stamp on work the company performed.

In an attempt to stop the unlicensed surveyor from continuing to use Thomas' license information and stamp, the Board obtained an injunction in Kanawha County Circuit Court; however the unlicensed surveyor still continued to operate his survey business and issue surveys and maps under Thomas' credentials.

The Board provided their file information to CSI and an investigation was initiated.

CSI Investigators gathered numerous documents, including surveys, plot maps and other information. Investigators determined the unlicensed surveyor had issued surveys and maps which were in turn used in numerous official property filings and transfers and relied upon by a variety of clients in personal and business property transactions. All of the parties, which included both individuals and business entities, that used the unlicensed surveyor and his company, believed they were receiving legitimate, licensed services.

In conjunction with the documentation review, CSI Investigators conducted interviews and were able to establish that the activity of the unlicensed surveyor constituted criminal violations of state law, i.e., the felony offense of Obtaining Money by False Pretenses. In June 2015, CSI findings were presented to the Kanawha County Prosecutor's Office for potential prosecution.

Appendix A

Media Items

Employee pleads guilty to taking money from WVU-Parkersburg

PARKERSBURG, W.Va. (AP) — A West Virginia University at Parkersburg employee faces up to 10 years in prison after pleading guilty to using school funds for personal expenses.

Kevin Francis Offenberger is scheduled to be sentenced in April. He pleaded guilty this week in Wood County Circuit Court to felony fraudulent scheme and felony use of a purchase card.

Assistant prosecuting attorney Patrick Lefebure tells the Parkersburg News and Sentinel that Offenberger used a university-issued purchase card for about \$54,000 in personal expenses between January 2009 and October 2013.

WVU-Parkersburg spokeswoman Katie Wootton declined to comment on the case.

Offenberger sentenced on charges

By Jeffery Saulton

PARKERSBURG – A suspended sentence was handed down in Wood County Circuit Court Tuesday to a former WVU at Parkersburg employee.

Kevin Francis Offenberger, 42, 50 Dogwood Estates, Mineral Wells, was sentenced after his January guilty plea to a bill of information charging him with fraudulent schemes and fraudulent or unauthorized use of a purchasing card.

Judge Robert Waters sentenced Offenberger to one to 10 years for the fraudulent scheme charge and one to five years for the unauthorized use charge to run concurrently, suspended for five years' probation. His probation officer was given 60 to 90 days to place him in custody as needed and Offenberger will also serve a mandatory 30 days in jail. Offenberger was ordered to repay WVU-P \$52,380.58 in restitution. He paid \$10,000 Tuesday.

According to court records, between January 2009 and October 2013, Offenberger stole approximately \$54,000 of the school's money for personal use. Offenberger was issued the purchasing card by the college to use for employment-related expenses; however, he used it for himself.

DOH supervisor arrested on federal charge

by [Kate White](#)

A West Virginia Division of Highways supervisor has been charged with making a false statement to a federal agent. A federal grand jury indicted Barry D. Thompson, 48, of Mount Clare, on Wednesday. Thompson was arrested Thursday, according to a news release from U.S. Attorney William Ihlenfeld, II of West Virginia's Northern District.

Thompson, who works as a supervisor in the Buckhannon office, lied while being questioned about an ongoing investigation into the DOH's equipment division, according to federal prosecutors.

The indictment states that Thompson made false statements about his knowledge and involvement of DOH employees "repairing and replacing parts for a dump truck on State time and at State expense." Thompson faces up to five years in prison and a fine of up to \$250,000. His case has been assigned to U.S. District Judge John Preston Bailey.

An indictment is not a finding of fact; it only means that grand jurors have decided that enough evidence exists to warrant a criminal trial.

Federal authorities are investigating the DOH equipment division's contract with an Ohio company that supplies parts for roadside mowers, according to previous Gazette reports.

In August, the U.S. Attorney's Office served search warrants at the DOH's equipment office at Buckhannon and at MoTrim Inc. in Cambridge, Ohio.

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

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 West Virginia. The office has about 90 employees.

The case is being investigated by the U.S. Attorney's Office of Public Corruption Unit, the State Police and the State Commission on Special Investigations, according to Ihlenfeld's news release.

Reach Kate White at kate.wh...@wvgazette.com or 304-348-1723.

Ex-highways worker receives probation

WHEELING, W.Va. (AP) — A former West Virginia Division of Highways supervisor who admitted lying to the FBI has received probation.

Edward Matthew Tuttle was sentenced on Wednesday to three years of probation. The 39-year-old Buckhannon resident had pleaded guilty in August 2014 to making a false statement to a federal agent.

U.S. Attorney William Ihlenfeld said Thursday that Tuttle made false statements to an FBI agent during an investigation of the DOH's Equipment Division.

Tuttle formerly served as a supervisor with the Equipment Division and as the DOH highway administrator in Upshur County.



OFFICE OF THE UNITED STATES ATTORNEY NORTHERN DISTRICT OF WEST VIRGINIA

William J. Ihlenfeld, II UNITED STATES ATTORNEY

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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.

Another DOH employee accused of lying to feds

by [Kate White](#)

CHARLESTON, W.Va. -- Another employee with the state Division of Highways has been charged with lying to a federal agent.

Edward Matthew Tuttle, 38, of Buckhannon, was indicted this week by a federal grand jury on one count of making a false statement to a federal agent during an investigation into the equipment division at the DOH.

Barry D. Thompson, 48, of Mount Clare, was indicted on the same charge last month. Prosecutors filed a superseding indictment against Thompson, a supervisor with the DOH's equipment division in Buckhannon, earlier this week.

The charge carries a maximum of five years in prison, according to a news release from U.S. Attorney William Ihlenfeld of West Virginia's Northern District.

Tuttle is the highway administrator for the DOH in Upshur County and used to be a supervisor with the equipment division. He allegedly lied to an FBI agent while being questioned last month about an investigation into the equipment division, according to the indictment.

Federal authorities have been investigating the DOH equipment division's contract with an Ohio company that supplies parts for roadside mowers.

The indictment states that Tuttle lied about "his knowledge of and involvement in the State of West Virginia employees transporting a Volvo tandem six axle dump truck on State time and at State expense after it was purchased at a [DOH] auction." Federal prosecutors say Tuttle transported the DOH equipment to Baltimore in 2011 with another DOH employee while on state time and at the state's expense to deliver to a third person on behalf of the auction buyer.

Thompson, prosecutors say in the indictment last month, made false statements about his knowledge and involvement of DOH employees "repairing and replacing parts for a dump truck on State time and at State expense." An indictment is not a finding of fact; it only means that grand jurors have decided that enough evidence exists to warrant a criminal trial.

In August, the U.S. Attorney's Office served search warrants at the DOH's equipment office at Buckhannon and at MoTrim Inc. in Cambridge, Ohio.

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

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 West Virginia. The office has about 90 employees.

The case is being investigated by the U.S. Attorney's Office of Public Corruption Unit, the State Police and the State Commission on Special Investigations, according to Ihlenfeld's news release.

Reach Kate White at kate.wh...@wvgazette.com or 304-348-1723.

Forced resignation at DOH adds to investigation intrigue

By [Hoppy Kercheval](#) in [Hoppy's Commentary](#) | August 26, 2014 at 12:11AM

The forced resignation of high-ranking state Division of Highways administrator Bob Andrew last Friday came just days after Andrew's name surfaced during a plea hearing for a former DOH supervisor.

Edward Tuttle, who resigned from the DOH last April, pleaded guilty Aug. 13 to lying to federal investigators about his role in delivering a sold surplus vehicle, on state time, to the Port of Baltimore, where it was to be shipped overseas.

During Tuttle's plea hearing, federal officials say, FBI special agent Morgan Spurlock testified that Andrew told Tuttle to deliver the vehicle. Officials say Spurlock further testified that Andrew filed forms with the DOH stating that the travel by Tuttle and a second unidentified individual was for a different purpose.

Andrew has not been charged with any crime.

Andrew has worked for the DOH for 16 years. He's the former head of the equipment division in Buckhannon, but was reassigned earlier this year to an \$82,000 a year job as a special executive assistant to Transportation Secretary Paul Mattox.

Federal and state authorities have focused on the Buckhannon office for some time now, looking into allegations of bid rigging, fraud and political activity on state time. U.S. Attorney Bill Ihlenfeld said on a recent Talkline show that their investigation is expanding.

"It's not just an Upshur County issue. It's a statewide issue," Ihlenfeld said. "There are other areas that we're looking at and other parts of the state of concern."

The *Charleston Gazette's* Eric Eyre reports that the U.S. Attorney's Office, the State Police, the FBI and the state Legislature's Commission on Special Investigations are all working on the case.

Eyre writes that "In 2006, the West Virginia Ethics Commission and the Legislative Auditor investigated truck and equipment purchases at the DOH equipment office. At the time, Andrew called the investigation 'a bunch of malarkey.' The investigation's findings were never made public."

Ihlenfeld also confirmed that subpoenas have been issued to individuals at the main DOH office in Charleston. It's believed that the subpoenas, as well as Andrew's name surfacing during Tuttle's plea hearing, prompted the abrupt departure of Andrew last Friday.

DOH officials are saying very little, only that they are continuing to cooperate with the investigation.

Tuttle's plea includes an agreement for him to continue cooperating with authorities. However, another former Buckhannon supervisor, Barry D. Thompson, is fighting the charge against him. He's scheduled for trial next month on a charge of lying to investigators.

It's hard to say where the investigation may lead. Investigators have been working this case for awhile now and the results, so far at least, have been modest. However, this probe could also be like cracked plaster; once a couple pieces come loose, the rest could come crumbling down.

Ex-DOH supervisor gets probation, will cooperate with feds

By Kate White, Staff writer

A former supervisor for the state Division of Highways was sentenced to a year of probation Wednesday in Upshur County Magistrate Court for lying to the State Police.

Barry D. Thompson, 49, of Mount Clare, also faces a charge in federal court, but is expected to cooperate with an investigation into the DOH's equipment division, according to a news release from U.S. Attorney William Ihlenfeld of West Virginia's Northern District.

If Thompson fully cooperates, Ihlenfeld said, he will dismiss the indictment charging Thompson with lying to a federal agent about DOH employees repairing and replacing parts for a dump truck on state time and at state expense.

Upshur Magistrate Juanita Adams handed down Thompson's sentence Wednesday after Thompson admitted he told at least one state employee, at state expense and on state time, to repair a dump truck that had previously been sold at public auction. Thompson resigned from the DOH in April.

Thompson also was present when a state employee was directed to travel in his state-issued vehicle, on state time, to purchase a replacement muffler for the dump truck. Both mufflers were sold at a discounted rate normally provided to the DOH, according to Ihlenfeld. Edward "Matt" Tuttle, also a former DOH supervisor in Buckhannon, pleaded guilty in August in federal court to lying about his role in delivering a surplus DOH truck to a buyer at the Port of Baltimore. The sold truck was to be shipped to Africa.

About a week after Tuttle's plea hearing, Bob Andrew, a 16-year DOH executive who formerly headed the equipment division in Buckhannon, abruptly resigned. Andrew had been reassigned from the equipment division since January.

An FBI agent testified several months ago that Andrew directed Tuttle and another employee to drive a surplus dump truck to Baltimore, then falsified paperwork about the trip's purpose, Ihlenfeld previously said. Tuttle's travel reimbursement form — signed by Andrew — states he went to Maryland and Virginia to "screen [GSA] equipment at various locations" four consecutive days in April 2011. Tuttle was reimbursed \$336 for mileage, meals and hotel expenses.

For more than a year, federal and state authorities have been investigating the equipment office over allegations of bid rigging, misuse of taxpayer funds and participating in political activities on state time. In August 2013, the U.S. Attorneys

Office simultaneously served search warrants at the DOH's equipment office in Buckhannon and at Mo Trim Inc., in Cambridge, Ohio.

The DOH equipment division buys trucks, bulldozers, graders, excavators, mowers, parts and other equipment for state highway garages throughout West Virginia. The office has about 90 employees. In 2006, the state Ethics Commission and the Legislative Auditor investigated truck and equipment purchases at the DOH equipment office. At the time, Andrew called the investigation "a bunch of malarkey." The investigation's findings were never made public.

Reach Kate White at kate.white@wvgazette.com, 304-348-1723 or follow @KateLWhite on Twitter.

DNR employee tried to sell state-owned man lift, police say

By Travis Crum



David Phillip Smith

CHARLESTON, W.Va. -- West Virginia State Police arrested a Division of Natural Resources employee who allegedly tried to sell a state-owned man lift to an undercover trooper.

David Phillip Smith, 56, of Kenna, was charged with embezzlement, a felony, on Thursday.

In May, representatives with the Legislature's Commission on Special Investigations began looking into Smith for suspicious purchases allegedly made on a state Visa purchasing card, according to a criminal complaint filed in Kanawha County Magistrate Court.

Investigators spoke to Zack Brown, a DNR biologist and Smith's supervisor, who said Smith had leased an 80-foot 2000 JLG Man Lift from Carco Automotive in Minnesota.

A man lift is a piece of heavy equipment with an extending arm that can lift a person several stories in the air.

Beginning in November 2011, the state paid out \$27,000 to lease the man lift, according to the complaint.

Last week, investigators interviewed Jeff Friedrich of Carco Automotive, who said Smith contacted him that month and asked him about buying it.

Smith allegedly told Friedrich that he could only buy the man lift if it was made to look like he was renting it, or making leasing payments.

Smith allegedly said the state would not let him buy used equipment, according to Friedrich. He asked to be allowed to make payments on the man lift, according to the complaint.

The Division of Natural Resources began making payments in November 2011. Those payments totaled \$27,500, which included \$25,000 for leasing and \$2,500 for the man lift's delivery.

Investigators learned this month that Smith was attempting to sell the man lift. On June 14, State Police Sgt. J.E. Davis went undercover and called Smith, according to the complaint. Smith allegedly agreed to sell the man lift to Davis for \$21,000. Davis met Smith and his son in Kanawha City Wednesday, where David Smith signed a bill of sale.

Investigators interviewed Smith, who said his son owned the man lift and he was helping him sell it, according to the complaint.

Smith told investigators that he planned to buy the man lift for the state, but that the state refused to pay off the remaining \$2,500 balance. Smith said his son paid the remaining balance and then became the owner.

Smith told investigators he never cleared making leasing payments as purchasing payments with his supervisors, according to the complaint.

Smith was arraigned in Kanawha County Magistrate Court and later released after posting a \$7,500 bail.

Reach Travis Crum at travis.c...@wvgazette.com or 304-348-5163.

Jury hands out indictments

Judge James Stucky, 1:30 p.m. Jan. 23

Robert Lyndale Alexander, 40, Detroit, Mich., conspiracy and VUCSA; Zacherie W. Busby, 18, Scott Depot, burglary; Joseph Timothy Elmore, 28, Charleston, burglary and petty larceny; Richard Scott Gratz, 38, Elkview, conspiracy and VUCSA; William Maxwell Harper, 26, Charleston, burglary, grand larceny and forgery and uttering; Vincent Larue Porter, 31, Dunbar, fleeing in vehicle from police with reckless indifference for the safety of others; Glenn David Skidmore, 40, Charleston, murder, malicious wounding, attempted murder, grand larceny and fraud and related activity in connection with an access device; **David P. Smith, 57, Kenna, embezzlement and misuse of purchasing card; Jordan Dawson Smith, 28, Kenna, embezzlement and misuse of purchasing card.**

Hinton woman is charged with stealing money from little league

Posted: Mar 04, 2015 3:21 PM EST
By Paul Hess, WVVA Internet Director

CONNECT



Kimberly K. Huffman, 53, is charged with embezzlement and fraudulent schemes for allegedly taking the money from the Hinton Little League

SUMMERS COUNTY (WVVA) A Hinton woman is accused of stealing \$5,000 from a little league baseball team.

Kimberly K. Huffman, 53, is charged with embezzlement and fraudulent schemes for allegedly taking the money from the Hinton Little League. Huffman was recently indicted by a Grand Jury in Summers County.

According to Chief Derek Snavelly with the Hinton Police, the theft took place between June 2008 and December 2013. Chief Snavelly says Huffman stole the money "through numerous ways of overpaying herself for reimbursements or fictitiously making reimbursements for payments never made by herself."

Snavelly says it is unclear how much money she actually took.

"We are pleased to finally get this case before the grand jury and get charges brought against Kimberly Huffman in this case. Sr. Ptlm. McClung has done an excellent job in this long and time consuming investigation. It is appalling to imagine someone would still from an organization that strives to get the youth of our community in a nice fun filled sporting event. We are happy to report that since the discovery of the theft the Hinton Little League is under new management and is back up and running well today," say Chief Derek Snavelly.

The Register-Herald
March 6, 2015

Hinton woman charged with stealing money from Little League

By Wendy Holdren Register-Herald Reporter | Posted: Wednesday, March 4, 2015 3:33 pm

A Hinton woman was indicted Tuesday by the Summers County grand jury for embezzlement and fraudulent schemes for stealing money from Hinton Little League, according to a release from Hinton Police Department.

Police report Kimberly K. Huffman, 53, the former Little League treasurer, stole just over \$5,000 between June 2008 and December 2013 by overpaying herself for reimbursements or fictitiously reimbursing herself for payments that were never made.

Senior Patrolman T.D. McClung conducted the investigation, with assistance from Steven Staton with the State of West Virginia Commission on Special Investigations.

Investigators said due to incomplete and missing financial records and receipts, it is unclear how much money Huffman allegedly stole, but they suspect the amount is greater than the amount listed in the indictment.

Hinton Police Chief Derek S. Snively said, "We are pleased to finally get this case before the grand jury and get charges brought against Kimberly Huffman in this case. Senior Patrolman McClung has done an excellent job in this long and time-consuming investigation. It is appalling to imagine someone would steal from an organization that strives to get the youth of our community in a nice, fun-filled sporting event. We are happy to report that since the discovery of the theft the Hinton Little League is under new management and is back up and running well today."

— E-mail: wholdren@register-herald.com and follow on Twitter @WendyHoldren

Hinton woman pleads not guilty to Little League embezzlement

A Hinton woman plead not guilty Monday to embezzling more than \$5,000 from the town's Little League and was placed on a \$5,000 personal recognizance bond during her arraignment.

Authorities said Kimberly K. Huffman, 53, overpaid herself for reimbursements or made false reimbursements for purchases never made between June 2008 and December 2013.

Hinton Police Chief Derek Snavelly said due to incomplete or missing financial records and receipts from Huffman during her tenure as treasurer of the organization, it is unclear how much money was actually stolen, but it is suspected to be far more than what she is charged with.

— Daniel Tyson

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.

