

West Virginia Legislature's Commission on Special Investigations C. S. I.

*Investigating Public
Corruption Since 1968*



36th Annual Report

July 1, 2015 – June 30, 2016

Co-Chairmen

William P. Cole III – President of the Senate
Lieutenant Governor
Tim Armstead – Speaker of the House

Director
Charles R. Bedwell

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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, 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 Commission Staff is currently comprised of a Director, Deputy Director, a Senior Investigator, 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 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 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 proposed 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 remaining 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, among other criminal violations. CSI Investigators have been actively involved in prosecuting cases in both State and Federal court.

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. Investigators work closely with many people within and outside of State government and our reputation for professionalism is second to no other investigative agency, State or Federal.



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 the appropriate Legislative Committee, if the subject falls outside the Commission’s purview.



West Virginia Legislature
Commission on Special Investigations



Mike Woelfel (D)
 Senator
 Joined CSI 2015



Charles S. Trump IV (R)
 Senator
 CSI Member 1993-2007
 Rejoined CSI 2015



Jeffery V. Kessler (D)
 Senator
 Minority Leader
 Joined CSI 2011



Mike Hall (R)
 Senator
 Joined CSI 2010



William P. Cole III (R)
 Senate President
 Lt. Governor
 Co-Chairman
 Joined CSI 2015



Tim Armstead (R)
 House Speaker
 Co-Chairman
 CSI Member 2007-09
 Rejoined CSI 2015



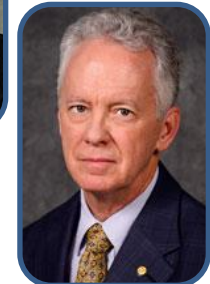
Mick Bates (D)
 Delegate
 Joined CSI 2015



Patrick Lane (R)
 Delegate
 Joined CSI 2009



Tim Miley (D)
 Delegate
 Minority Leader
 Joined CSI 2013



John Shott (R)
 Delegate
 Joined CSI 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.”

The current investigative staff has previously distinguished themselves with successful law enforcement careers, ranging from senior supervisors and administrators in both large municipal police departments and the State Police, and as a Special Agent with the Criminal Investigation Division of the Internal Revenue Service.

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.

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.





Director

Charles R. Bedwell Joined CSI – 2003

33 years' law enforcement experience

Professional Experience:

WV State Police

Major - Deputy Chief of Staff

**Chief of Criminal Identification Bureau &
Traffic Services**

Director - Planning & Research

Education:

**WV State University, Marshall University,
Northwestern University, WV State Police
Academy**

Deputy Director

James S. Powers Joined CSI – 2002

40 years' law enforcement experience

Professional Experience:

WV State Police

Lieutenant Colonel - Chief of Staff

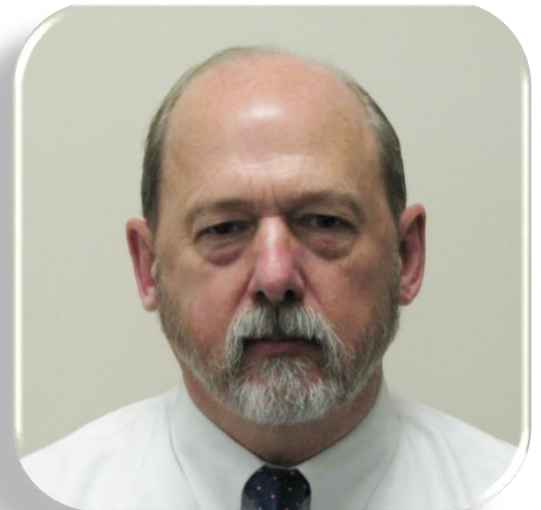
Chief of Administrative Services

Director – Procurement

BCI Grant Forfeiture Officer

Education:

**Radford University, Virginia Polytechnic
Institute, FLETC – Glenco, WV State Police
Academy**





Senior Investigator

Steven E. Staton Joined CSI – 1999

43 years' law enforcement experience

Professional Experience:

**Beckley, WV Police Department
Lieutenant – Shift Commander**

Education:

**Marshal University, Concord University,
WV State Police Academy**

Investigator

Rick D. Eplin Joined CSI – 2014

30 years' law enforcement experience

Professional Experience:

**Huntington, WV Police Department
Captain – O.I.C Criminal Investigation Division**

Education:

**WV State University, FBI National Academy,
WV State Police Academy**





Investigator

Michael G. Robinson Joined CSI – 2015

26 years' law enforcement experience

Professional Experience:

WV State Police

First Sergeant - BCI Regional Coordinator

Multi-jurisdictional Task Force Coordinator

Detachment Commander

Education:

**Marshall University, Glenville State College, WV
State Police Academy**

Investigator

Robert F. Lanham, CPA Joined CSI – 2016

25 years' law enforcement experience

Professional Experience:

Special Agent- IRS Criminal Investigation

Education:

WV State University, FLETC Glenco



**Longest serving member of
CSI Staff**



Administrative Assistant

Lisa M. Wilkinson Joined CSI – 1985

Education:

Marshall University, WV State University

Staff Retirements and Resignations FY 2016



Retired 12-31-15
Senior Investigator
Roy M. Hutchison

Resigned 02-11-16
Investigator
Herbert Shelton III



Recognition of Retired Senior Investigator

Roy M. Hutchison II

Staff Member 08/01/2001 – 12/31/2015



Roy Madison Hutchison II, native West Virginian and lifelong resident of South Charleston, Kanawha County, West Virginia, served the Commission on Special Investigations with honor and distinction, occupying the positions of Investigator, Senior Investigator and Armament Officer. Upon graduating from South Charleston Senior High School, Roy volunteered for duty with the United States Army in 1971, and was assigned to the 57th Military Police Company stationed at the United States Military Academy at West Point.

Following an honorable discharge, Roy continued his law enforcement career by accepting a position with the South Charleston Police Department. During his 25-year tour at SCPD, Roy's intelligence, dedication and initiative were recognized as he rose through the ranks, retiring at the rank of Lieutenant. Assigned ever increasing responsibilities within the Police Department, Roy served as Detective, SWAT Team Commander, Patrol Supervisor, Executive Officer and Assistant Chief of Police, among a wide variety of other positions and duties.

Always looking to advance his law enforcement knowledge and positively contribute to the profession he so dearly loves, Roy continued his post-secondary education beyond

his extensive Military and Police Academy training, earning a Bachelor's Degree from WV State University and his Masters from West Virginia University. He also accepted a position as Adjunct Professor at West Virginia State University, a position that allowed him to contribute his considerable expertise to his fellow law enforcement professionals and students in the Criminal Justice curriculum.

In August 2001, Roy became a member of the investigative staff at CSI. His experience and devotion to the investigative process were quickly acknowledged as he was assigned investigations of ever increasing complexity that required his unique talents and attention to detail. When CSI received statutory authority to carry firearms, Roy was designated as the CSI Armament Officer and coordinated all weapons related procurement as well as training and qualification/certification for fellow CSI Staff. He was subsequently promoted to Senior Investigator and assumed additional duties related to training and directing less experienced Investigators and accepting the role of Lead Investigator on more difficult investigations.

Always a team player, Roy was not one to seek recognition for what he considered "just doing my job" as a member of CSI, but was the recipient of multiple US Attorneys' Awards recognizing his investigative efforts on important cases and numerous letters of commendation from government officials and citizens.

We wish Roy the best in retirement!

SENIOR INVESTIGATOR



MASTER ARMORER

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 who 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

Andrew R. Cogar, Assistant US Attorney, WVND

Jarod J. Douglas, Assistant US Attorney, WVND

Sarah Montoro, Assistant US Attorney WVND

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

J.T. Hodges III – Assistant Prosecuting Attorney – Marion County

S/A Scott Fell, DHS/ICE – Pittsburgh

S/A William Foley, HUD OIG – Pittsburgh

S/A Jeff Goode, IRS CID – Charleston

S/A Hugh Mallet, FBI – Charleston

S/A David Rauser, FBI – Martinsburg

S/A Stephen Wilburn, DOL OIG - Pittsburgh

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

Sergeant Lacy Deskins, WV State Police - BCI

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

Staff at Work



Deputy Director Powers unloads seized records



Investigator Lanham accesses computer memory



Investigator Robinson finalizes prosecution report



Senior Investigator Staton begins another road trip.

Staff meets to review case progress



Investigators Lanham & Robinson undergo semi-annual firearms qualification





Investigator Eplin confers with Kanawha County Assistant Prosecutor Rob Schulenberg

Ms. Wilkinson multitasking and keeping things on track



Director Bedwell prepares for Commission meeting

WEST VIRGINIA



CSI

Activities of the Commission

July 1, 2015 – June 30, 2016

During this fiscal year, the Commission on Special Investigations opened 27 investigative files and closed 19. Additionally, the Commission Staff conducted preliminary inquiries and exceptionally closed seven 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. One additional matter was identified for possible investigation and deferred for future action. Commission Staff processed seven requests for special assistance that did not require an active inquiry or investigation. 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 six 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 at any level of State government.

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:

Public Defender Services – Fraudulent Billings

In August 2011, CSI received information from the West Virginia Public Defender Services (PDS) regarding possible false billings by Attorney Jason Grubb. Following a preliminary inquiry, the Commission opened a file and Senior Investigator Steve Staton was assigned as Lead Investigator.

Investigator Staton presented to the United States Attorney's Office in Charleston, WV details of his review of payment vouchers submitted by the Attorney, as well as

comparisons with other records. As a result of this meeting a joint investigation was undertaken in cooperation with Special Agent Jeffrey Goode of the Internal Revenue Service - Criminal Investigation Division. The initial CSI investigation revealed that between April 14, 2008 and June 9, 2011, the Attorney submitted 764 vouchers and was paid \$695,714.45, with 51 days claiming the Attorney worked more than 24 hours per day. The joint investigation then focused on the Attorney's potential violation of specific tax laws.

In September 2015, a Beckley, WV Federal Grand Jury returned an indictment charging Grubb with six counts of mail fraud and 24 counts of "Failure to collect, account for and pay over employment taxes." Grubb entered a plea to one count of willfully failing to truthfully account for and pay over to the IRS employment taxes for his secretary's taxable wages and agreed to pay \$29,193.32 to Daniels Capital Corp., an accounts receivable loan company, \$126,225 to WV Public Defender Services, and \$247,035.97 to the IRS.

In June 2016, U.S. District Judge Irene Berger sentenced Grubb to 18 months in federal prison, in addition to ordering the agreed upon restitution. The West Virginia Supreme Court issued an order annulling Grubb's license to practice law.

Shepherd University – Purchasing Card Fraud

In August 2012, CSI was informed by the WV State Auditor's Office, of what appeared to be, significant P-Card fraud at Shepherd University. Tim Butler, Director of the Auditor's Purchasing Card Program Oversight unit, reported that Elizabeth Shanton, Director of Commuter Engagement, Greek Affairs and Information Center at the University, and holder of a State Purchasing Card, had made a large number of purchases that seem to have no connection to her employment. Suspicious purchases included African American Art from a Hagerstown, Maryland gallery, Coach designer handbags, NFL (National Football League) apparel, Mary K Cosmetics, perfumes, and charges at the "Paris Boutique" in New York City.

Following an initial CSI inquiry, the Commission opened a file and Senior Investigator Steve Staton was assigned to lead the investigation, working closely with Director Butler.

The investigation required extensive interviews of University employees, and contact with numerous businesses where Shanton had utilized her State Purchase Card to obtain details of the items purchased. While Shanton's explanation that all the items were purchased for prizes in student giveaways and activities, the investigation revealed this was not the case for many of the items purchased.

Upon completion of the investigation, and presentment to a Jefferson County Grand Jury, Shanton was indicted on 54 fraud-related counts for misuse of a State Purchasing Card. The effective dismissal of 53 of the 54 indictment counts when a Circuit Judge collapsed all 54 counts into a separate fraudulent scheme count resulted in an appeal to the West Virginia Supreme Court. The court's ruling reinstated the original charges and Shanton was tried for all 54 counts.

The trial resulted in Shanton being found guilty of 15 felony counts of fraudulent use of a State Purchasing Card with potential penalties of 15 to 75 years in prison with a possible \$5,000 fine for each conviction.

In February 2016, Jefferson County Circuit Judge David H. Saunders sentenced Elizabeth Shanton to five years' probation. Following motions by Shanton's Attorney and State Prosecutor Brandy Sims, restitution of \$6,246.43 was ordered.

Shanton's convictions are currently under appeal to the West Virginia Supreme Court.

Boone County Ambulance Authority – Personal Loan

In April 2015, CSI Investigator Rick Eplin received information that then Executive Director of the Boone County Ambulance Authority (BCAA), Randy Lengyel, had received a personal loan from the Ambulance Authority for approximately \$100,000. Investigator Eplin was able to confirm existence of the loan, which was made to Lengyel in order that he could purchase retirement credits in the new EMS retirement system. Following Investigator Eplin's initial inquiry, the Commission opened a file in June 2015 and a full investigation of the matter was undertaken, with Investigator Eplin assigned as Lead Investigator.

The resultant investigation revealed the BCAA Board of Directors approved the loan in 2012 to allow the Executive Director to buy into the WV Emergency Medical Services Retirement System (EMSRS). Lengyel's transfer from the State Public Employee's Retirement System (PERS) to the EMSRS was permissible due to a 2012 change in State law allowing EMS Directors with certain qualifications to transfer from PERS to EMSRS. The loan was approved by the Board of Directors and the terms of the loan were memorialized in an agreement signed in September 2013 by Lengyel, Board President Harold Green and Vice-President Joe Gollie. Under the agreement terms, the interest free loan amount was \$103,000, to be repaid in equal monthly installments of \$350.00, with the first payment not due until Lengyel had received his first payment of retirement benefits under the EMSRS.

As a result of the investigation, Lengyel was directed by Boone County Prosecuting Attorney Keith Randolph to immediately repay the loan to the BCAA and to self-report the facts surrounding the loan to the WV Ethics Commission, or face possible criminal or civil action. The Prosecutor also began the process to seek removal of the Board President and Vice President through the appropriate judicial authorities.

In September 2015, the WV Ethics Commission issued an advisory opinion on the actions of the BCAA Board of Directors and its Executive Director determining the loan violated the State Ethics Act in that:

- Executive Director Lengyel used his public position for personal gain.
- The loan agreement/contract was a prohibited public contract.

The Ethics Commission also entered into conciliation agreements with Lengyel, Green and Gollie:

- Randy Lengyel was fined \$5,000
- Harold D. Green was fined \$1,000
- Joseph Gollie was fined \$1,000

All three individuals were issued a public reprimand and directed to undergo WV Ethics Act training.

In October 2015, Lengyel provided documentation to the Boone County Prosecutor's Office indicating he had reimbursed the BCAA the entire \$103,000.

Prior to the BCAA Board meeting in November 2015, both the President and Vice-President resigned and the new Board elected to terminate Lengyel's employment with the Authority.

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

The United States Attorney's Northern District Public Corruption Task Force conducts joint agency, State/Federal investigations into matters of public corruption. The Task Force is led by the West Virginia Northern District US Attorney's Office and includes Special Agents and Investigators from the FBI, IRS-Criminal Investigation Division, West Virginia State Police and the Commission on Special Investigations. One extensive investigation by the Task Force focused on the WV Division of Highways' Equipment Division.

This investigation was initiated in late 2012 with then Deputy Director Herb Cogar and current Deputy Director James Powers working to develop information and identify illegal activities and those involved in those activities. Deputy Director Powers became the Lead CSI Investigator assigned to the Task Force when Deputy Director Cogar retired in late 2014. In August of the following year, search warrants were executed at the Equipment Division offices in Buckhannon and at the Ohio corporate offices of Mo-Trim, where records regarding the purchase of roadside mowers and related parts from Mo-Trim were seized by Investigators.

With support of the main US Department of Justice in Washington D.C., the Northern US Attorney's Office was successful in securing Federal indictments against Robert "Bob" Andrew, who was Director of the Equipment Division. Andrew was indicted on a total of 29 charges, including RICO, wire fraud, mail fraud causing theft of government property, document tampering and witness tampering. The schemes involved included contract fraud between the DOH and Mo-Trim, a post auction scheme where DOH resources were used to deliver items sold during DOH auctions for profit; a salvage scheme where better than salvaged materials were disposed of in exchange for bribes; a General Services Administration (GSA) scheme wherein Federal surplus property obtained by the DOH was disposed of illegally for profit; and a political activity scheme where campaign banners were placed on semi-trailers along major highways throughout the State using DOH personnel and resources. This particular scheme also involved major DOH vendors and the solicitation and collection of campaign contributions. Mr. Andrew took his own life a few hours after the indictments became public.

Mo-Trim, Inc. entered into a Deferred Prosecution Agreement, wherein the corporation agreed to the following:

- Acknowledges and accepts responsibility for its misconduct as alleged in the indictment;
- Implement corporate reforms to redress and prevent any such future misconduct;
- Cooperate with any pending or future investigations, grand jury investigations, or other matters as required by the US Attorney, and identify and provide evidence of any other criminal wrongdoing or suspected wrongdoing; and
- Pay restitution of \$75,000.00 to the State of West Virginia.

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

This investigation resulted from a referral in April 2014 from Tim Butler, Director of Program Oversight, Purchasing Card Program, 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.

After an initial inquiry, the Commission opened a file in May with Deputy Director James Powers assigned as Lead Investigator. An intensive investigation was undertaken requiring 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 involving 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 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. David Smith's employment with the DNR was terminated as a result of his activities revealed during this investigation. He appealed his termination.

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 in the Kanawha County Prosecutor's Office, the case was re-indicted 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.

In November, David Smith pled guilty before Kanawha County Circuit Judge James Stucky to one felony count of fraudulent use of a State Purchasing Card and was sentenced to two years' probation. As a result of David Smith's guilty plea, Prosecutors agreed to dismiss all charges against his son. Smith's felony conviction constituted "less than honorable service" under the State pension system and his participation in the system was terminated. Smith is ineligible to receive any benefits from the system arising from his former participation.

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, Robert R. Johnson, 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 no longer associated 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 utilizing Thomas' credentials and official stamp on work the company performed.

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

The Board provided their file information to CSI. The Commission opened a file and an investigation was initiated. Deputy Director Herb Cogar was originally assigned to lead the investigation, and upon his retirement the investigation was reassigned, with Investigator Mike Robinson completing the inquiry.

Numerous documents were reviewed, including surveys, plot maps and other information. Investigators were able to determine Johnson had issued surveys and maps that were in turn used in numerous official property filings and transfers. A variety of Johnson's clients in personal and business property transactions relied on those documents. All of the parties, which included both individuals and business entities, who used Johnson and his company, believed they were receiving legitimate, licensed services.

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

In October 2015, the Kanawha County Prosecutor entered into a plea agreement related to a single forged certification of a survey Johnson performed in March 2014, which had been presented to the Kanawha County Assessor's Office as authentic.

On January 14, 2016, Johnson entered a plea of guilty to Uttering a Forged Document before Kanawha County Circuit Judge Joanna Tabit. Johnson was sentenced the following week to three years' probation and agreed to pay restitution of \$1,875.55. Johnson is no longer conducting surveys.



Appendix A News Items

McDowell County assistant prosecutor admits to tax crime

BECKLEY, W.Va. (AP)—An assistant prosecutor in McDowell County has pleaded guilty to a federal tax crime committed while working in private practice.

Acting U.S. Attorney Carol Casto says 38-year-old Jason Ray Grubb of Beaver entered the plea in federal court in Beckley on Wednesday to failing to pay employment taxes.

According to Casto, Grubb admitted that while working as a lawyer in private practice, he pocketed taxes that were withheld from an employee's paycheck.

Grubb faces up to five years in federal prison and a \$10,000 fine when he's sentenced May 12.

Casto says Grubb also agreed to pay restitution for failing to pay more than \$247,000 in federal taxes, overbilling West Virginia Public Defender Services more than \$126,000, and failing to pay a financing company for more than \$29,000 in advances.

Register-Herald
April 22, 2016

W.Va. Supreme Court suspends Beaver attorney's law license

By Wendy Holdren Register-Herald Reporter

The West Virginia Supreme Court of Appeals recently ordered the suspension of the law license of a McDowell County assistant prosecuting attorney.

Jason R. Grubb, of Beaver, was served Feb. 19 with a petition from the Office of Disciplinary Counsel, but he did not make a request for a hearing. He pleaded guilty Feb. 3 in federal court to failing to pay more than \$1,000 in employment taxes to the IRS for his secretary's taxable wages.

His sentencing has been delayed from May 12 to June 1 at 10 a.m. He will face up to five years in prison, a fine of up to \$250,000 and three years' supervised release when he is sentenced by U.S. District Judge Irene C. Berger.

Grubb was indicted in September last year on 30 criminal counts: six for mail fraud and 24 for failure to collect, account for and pay over employment taxes.

By way of a plea agreement, Grubb entered a guilty plea to Count 30, which charges him with willfully failing to truthfully account for and pay over to the IRS employment taxes from January 2013 through March 2013, totaling \$1,031.17. All other charges pending against him will be dropped.

In the plea agreement, he agreed to pay \$29,193 in restitution to Daniels Capital Corporation, \$126,225 to West Virginia Public Defender Services and \$247,036 to the IRS.

According to the April 6 suspension order, "(T)he Court is of the opinion that good cause exists to find that the respondent has committed a violation of the Rules of Professional Conduct and poses a substantial threat of irreparable harm to the public."

Former McDowell assistant prosecutor sentenced to federal prison

A former McDowell County assistant prosecutor was sentenced Wednesday to spend more than a year in federal prison for a tax crime committed while he was in private practice.

Jason Ray Grubb, 38, of Beaver, was sentenced to spend 18 months in federal prison for failing to pay employment taxes. He admitted to the charge earlier this year.

Before U.S. District Judge Irene Berger handed down the sentence, according to court documents, McDowell Prosecuting Attorney Ed Kornish was called by Grubb's attorney to speak.

Grubb is represented by lawyer Timothy Lupardus.

Berger also ordered Grubb to pay a little more than \$400,000 in restitution, court documents show.

Grubb pocketed the taxes he withheld from an employee's paycheck, he admitted. He had faced up to five years in prison.

Last month, the West Virginia Supreme Court issued an order which annulled Grubb's license to practice law.

He was allowed Wednesday to remain free on bond and self-report to prison.

Shepherd University employee, others indicted during April Jefferson County grand jury term

April 19, 2013. By RICHARD F. BELISLE richardb@herald-mail.com

CHARLES TOWN, W. Va. - A Jefferson County grand jury this week indicted a Shepherd University employee on multiple charges of fraudulent use of the college's purchase cards in a case involving nearly \$86,000 from October 2010 to August 2012, according to court records.

Elizabeth A. "Libby" Shanton, 48, of 328 N. Centre St. in Martinsburg, W. Va., was indicted on 53 counts of fraudulent or unauthorized use of a purchasing card and one count of fraudulent schemes.

According to a memorandum to Shepherd employees this week from university President Suzanne Shipley, school officials became aware "of the appearance of improper expenditures by an employee," and contacted the state auditor's office.

"We directed our staff to provide full cooperation in the investigation ..." Shipley wrote.

Investigators visited campus many times, interviewed staffers and took boxes of financial records to Charleston, the memo said.

The investigators were not forthcoming with information about the investigation until last fall, when the university was cited for failure to have in place "adequate reviews to determine whether a purchase is appropriate," the memo said. The university responded by making modifications to internal controls and accounting procedures, Shipley said in the memo.

According to the indictments, Shanton used the school's purchase cards in stores and online to buy clothes, auto parts, jewelry, cosmetics, Halloween costumes, barbecue sauce, a KitchenAid mixer, luggage, purses, perfume and other items.

Steve Staton of the West Virginia Commission on Special Investigations and Tim Butler of the state auditor's office testified before the grand jury, according to the indictment.

Court: Counts against ex-Shepherd official can be prosecuted

By Pam Ramsey
The Associated Press

CHARLESTON, W.Va.- A circuit judge wrongly dismissed 53 criminal counts alleging that a former Shepherd University dean of student affairs made unauthorized or fraudulent purchases with a state-issued card, the West Virginia Supreme Court said.

Jefferson County Circuit Court Judge David A. Saunders deprived the state of its right to prosecute the case when he erroneously determined that the charges against Elizabeth A. "Libby" Shanton violated double jeopardy principles, the court said Wednesday in a unanimous opinion written by Justice Brent Benjamin.

Shanton was indicted in 2013 on charges of using a state purchasing card 53 times between Oct. 9, 2010, and Aug. 2, 2012, to buy goods and services that were not for official state purposes. The purchases included designer handbags, perfume, cosmetics, windshield wiper blades and New York Giants men's and women's underwear.

Saunders determined that the purchasing card's use was a continuing offense. He collapsed all 53 counts of fraudulent or unauthorized use of a purchasing card into a separate fraudulent scheme count, effectively dismissing them, the Supreme Court said.

The court said that the 53 counts constitute separate offenses.

The fraudulent scheme count alleges Shanton claimed on a monthly transaction log in 2011 that more than \$85,000 worth of goods and services were bought for official state purposes, but the purposes were not official.

"The Supreme Court's decision is a win for the citizens of West Virginia who have the right to prosecute these offenses against the state and we look forward to trying this case on all fifty-four counts," Brandon Sims, Jefferson county assistant prosecutor, said Thursday in an email.

Kevin Mills, one of Shanton's attorneys, said there was never intention to commit a crime.

"We think the circuit court was right. But irrespective of the Supreme Court's decision to break the case down in to a series of unmanageable and unrelated component sets, we still believe that she will be vindicated," Mills said Thursday in a telephone interview.

"This is just step one of probably 12 even stronger legal issues to come," said Mills, whose partner, Shawn R. McDermott, argued the case before the Supreme Court.

A June 8 hearing is scheduled in circuit court to set a new trial date, Sims said.

Deliberations begin in ex-Shepherd administrator's trial

CHARLES TOWN, W.Va. (AP)- A former Shepherd University administrator is on trial on charges of using a state-issued purchasing card to buy more than \$85,000 worth of handbags, perfume and other unauthorized goods and services.

A Jefferson County Circuit Court jury began deliberations Monday afternoon in the trial of Elizabeth "Libby" Shanton, 50, of Martinsburg following two weeks of testimony. Shanton is charged with one count of fraudulent schemes and 53 counts of misuse of a state-issued purchasing card, The Journal reported.

Shanton was indicted in 2013 on charges of using a state purchasing card 53 times between Oct. 9, 2010, and Aug. 2, 2012, to buy designer handbags, perfume, cosmetics, windshield wiper blades and other goods and services that were not for official state purposes.

Shanton's attorney, Shawn McDermott, told jurors on Monday in closing arguments that she was a scapegoat for a "liberal culture of spending" at Shepherd.

In her closing arguments, Jefferson County Assistant Prosecuting Attorney Brandi Sims pointed to multiple receipts Shanton did and did not turn in to Shepherd's purchasing department as proof that she was being "willfully deceitful" and attempting to hide her alleged spending spree.

Circuit Judge David A. Saunders had collapsed all 53 counts of misuse of a state-issued purchasing card into a separate fraudulent scheme count. Saunders determined that the purchasing card's use was a continuing offense. But his decision was overturned in May by the West Virginia Supreme Court, which said the 53 counts constitute separate offenses.

The Supreme Court's opinion said Saunders deprived the state of its right to prosecute the case.

Jury convicts former Shepherd University administrator of some purchasing charges

CHARLES TOWN, W.Va. {AP} – A jury found a former Shepherd University administrator guilty Tuesday of 15 counts of misuse of a state-issued purchasing card.

The Jefferson County Circuit Court jury also found 50-year-old Elizabeth "Libby" Shanton of Martinsburg not guilty Tuesday of one count of fraudulent schemes and 39 other counts of misuse of a state-issue purchasing card, The Journal reported. Jurors began deliberations on Monday following two weeks of testimony.

Sentencing was set for Feb. 22.

Shanton, who had served as the university's dean of student affairs, was indicted in 2013 on charges of using the purchasing card 53 times between October 2010 and August 2012 to buy \$85,000 worth of designer handbags, perfume, cosmetics, windshield wiper blades and other goods and services that weren't for official state purposes.

Shanton's attorney, Shawn McDermott, told jurors on Monday in closing arguments that she was a scapegoat for a "liberal culture of spending" at Shepherd.

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The Supreme Court's opinion said Sanders deprived the state of its right to prosecute the case.

The Picket

The Voice of the Shepherd University Student Body Since 1896

Former Shepherd Dean Avoids Prison on Misappropriation Charge, Gets Probation

February 24, 2016

By **MIKE MORRIS**

THE PICKET A former Shepherd University dean of Student Affairs faces five years' probation after her conviction for fraudulent use of state funds.

Elizabeth "Libby" Shanton was sentenced Monday by Judge David H. Sanders of the Jefferson County Circuit Court.

Shanton was convicted last December following a 10-day trial on 15 counts of fraudulent or unauthorized use of a state purchasing card, according to sentencing documents provided by the Circuit Court of Jefferson County.

Shanton spent lavishly on the card the school provided her. According to court documents, she accrued \$85,932.67 in fraudulent expenses. Some of her illicit purchases include \$647.49 spent at the Coach outlet in Hagerstown, Maryland, in October 2010; \$422 spent later that month at a Party City location in Fayetteville, North Carolina, where she purchased "plates, colored cutlery, clear mini tongs, clear plastic tumblers, and various colored hand towels," and \$199 in undisclosed products from a beauty shop in Raeford, North Carolina. Shanton also purchased \$350 worth of products such as perfume, cologne and barbecue sauce from a discount outlet in North Carolina.

In addition to her probation, Shanton must pay restitution totaling \$6,246.43. She has 30 days to file a notice of intent to appeal the court's decision, and then four months to file the formal appeal.

Boone County Ambulance Authority under investigation following financial decision

Posted: Aug 13, 2015 5:34PM EDT Updated: Aug 14, 2015 10:58AM EDT

By Hillary Hall, Reporter

The Boone County Ambulance Authority is being investigated following a financial decision that was made public.

The investigation focuses on a large sum of money loaned to Boone County Ambulance Authority Director, Randy Lengyel.

Lengyel confirmed to 13 News that the Boone County Ambulance Authority Board of Directors approved the loan several years ago that would be paid back once he retired.

That money, which we have been told is in the range of six figures, came from the services general funds that are supplied through medical billing.

Boone County Commission confirmed that the case was presented to them and then passed to another investigative department.

Commission President Ed Hendricks issued the following statement:

"There is a pending investigation into the matter. The investigation is being conducted by the West Virginia Legislature Commission on Special Investigations." said Commissioner Hendricks.

The West Virginia Legislature Commission on Special Investigations was not able to release any specific details about the case because it is still ongoing.

The Boone County Ambulance Authority will hold a public meeting on August 20. Many are expected to be there to find out more about his "loan."

Boone ambulance director got \$103K loan to enhance retirement

By Eric Eyre

Boone County Ambulance Authority Director Randy Lengyel secured an illegal \$103,000 personal loan from the agency and used the money to enhance his retirement benefits, according to a letter that summarizes a state investigation.

Boone Prosecuting Attorney D. Keith Randolph has directed Lengyel to pay back the no-interest loan in full by Sept. 30 – or face possible ethics charges.

In an interview with the Gazette-Mail this week, Lengyel said he would reimburse the ambulance authority immediately.

"I'm paying it back now- in full," Lengyel said. "Everything's going to be taken care of. It will all be paid back, and there won't be an issue."

The state Legislature's Commission on Special Investigations started investigating Lengyel in May, directing the Boone Ambulance Authority to turn over bank statements, meeting minutes and loan documents, according to a letter obtained by the Gazette-Mail.

In September 2013, Lengyel persuaded ambulance authority board members to loan him \$103,000 so he could switch from the West Virginia state employees' retirement plan to more lucrative plan set up for emergency medical service workers. Under the loan's terms -which the board never voted on – Lengyel agreed to pay off the no-interest loan in monthly installments of \$350 after he retired.

Under state law, the ambulance board had no legal authority to make a personal loan- "let alone a personal loan to an employee," according to a letter sent by the Boone Prosecuting Attorney's Office to Lengyel on July 31.

In 2012, Lengyel asked then-Delegate Josh Stowers, D-Lincoln, to introduce legislation that would allow ambulance directors across the state to bolster their retirement benefits, Stowers confirmed this week.

The bill gave a one-year window for directors to switch from the Public Employees Retirement System to the Emergency Medical Services Retirement System. The EMS plan comes with significantly higher monthly retirement payments. EMS plan recipients also can retire and start collecting payments 10 years earlier than state employees.

"Randy approached me about wanting to buy into the EMS retirement system," Stowers recalled earlier this week. "My job was to open the system to allow someone to buy back into something that may be more beneficial as long as the state was due what it was due. How he acquired those monies, I wasn't a part of."

Stowers resigned from the Legislature to take a job as chief deputy to state Treasurer John Perdue in July 2013, three months before the Boone ambulance board approved the illegal personal loan.

"Obviously, I don't think he should have acquired the money in a way that may have been inappropriate," Stowers said.

The West Virginia Senate and House of Delegates passed Stowers' bill, and Gov. Earl Ray Tomblin signed it into law.

Lengyel was the only ambulance director in West Virginia to take advantage of the new law and switch retirement plans the following year.

Many ambulance directors signed up for the EMS retirement plan when it started in 2007, but Lengyel wasn't working at the Boone Ambulance Authority at the time. Directors weren't allowed to buy into the system again until Stowers' bill passed five years later.

"Anyone taking advantage of this legislation, they had to bear all of the true costs in order to do the transfer," said Teresa Miller, deputy director of the state Consolidated Public Retirement Board. "The person had to pay the full cost. There was no cost to the state."

In his letter to Lengyel, Randolph said he could refer the ambulance authority investigation to a Boone County grand jury or the state Ethics Commission. Randolph said he would file a "civil action" to void the authority's loan, if Lengyel doesn't pay it back.

"All of the above comes to this: The money must be returned immediately, and in full, to the Boone County Ambulance Authority," Randolph told Lengyel in the letter.

Randolph could not be reached for comment Thursday.

Lengyel said he plans to stay in the EMS retirement plan. He declined to say how he would come up with the money to repay the \$103,000 loan so quickly.

Lengyel denied any wrongdoing.

"We couldn't find anything wrong with [the personal loan]," he said. "I don't have any details to give you. I don't see any issues at all."

Reach Eric Eyre at ericeyre@wvgazette.com, 304-348-4869 or follow @ericeyre on Twitter.

Boone commission moves to remove ambulance board officials

By Staff reports

MADISON, W.Va.-- Boone County commissioners have taken the first step in removing two members of the county's ambulance authority board.

Commissioners voted Tuesday to file a petition to have President Harold Green and Vice President Joseph Gollie removed from the authority's board of directors, county attorney Keith Randolph said.

Randy Lengyel, director of the authority, is under investigation for accepting an illegal \$103,000 loan from the board. Last month, Randolph directed Lengyel to pay back the loan by Sept. 30 or face possible ethics charges. Lengyel used the zero-interest personal loan to enhance his retirement benefits.

Randolph said the process for removing the board members is not unlike that of removing elected officials.

Randolph's office will file the petition on behalf of the county commission. The petition will then be sent to circuit court, where the chief judge will forward it on to the state Supreme Court requesting a three-judge panel to decide whether or not to remove the board members, Randolph said.

Randolph wasn't sure how long the process could take.

Lengyel has denied any wrongdoing. In an interview last month, he told the Gazette-Mail he would pay back the loan.

"I'm paying it back now-in full," Lengyel said. "Everything's going to be taken care of. It will all be paid back, and there won't be an issue."

The state Legislature's Commission on Special Investigations started investigating Lengyel in May, directing the Boone Ambulance Authority to turn over bank statements, meeting minutes and loan documents, according to a letter obtained by the Gazette-Mail.

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\$350 after he retired. Under state law, the ambulance board had no legal authority to make a personal loan "let alone a personal loan to an employee," according to a letter sent by the Boone Prosecuting Attorney's Office to Lengyel on July 31.

Randolph said he anticipates filing the petition after the next county commission meeting, slated for Sept. 15.

Green and Gollie could not be reached for comment.

Boone ambulance chief pays back illegal loan

by Eric Eyre

Boone County ambulance director Randy Lengyel has paid back an illegal loan that he used to enhance his retirement benefits.

Lengyel delivered a \$103,000 check to the Boone Ambulance Authority Tuesday and faxed documentation of the repayment to the Boone County Prosecuting Attorney's Office on Friday.

"I always intended to pay it back," Lengyel told the Gazette-Mail. "I got the money and paid it back in full. I haven't heard anything else."

The repayment came just days after Boone County commissioners asked a judge to force Lengyel to pay back the personal loan and freeze his retirement benefits, after Lengyel missed a Sept. 30 deadline to repay the money.

The Boone County Commission filed a civil complaint against Lengyel, alleging that he lobbied for "targeted legislation" that allowed him to enhance his retirement benefits, then persuaded the ambulance authority board to give him a no-interest loan so he could switch from the state public employee's retirement plan to a more lucrative plan set up for emergency services workers.

"We were just trying to get our money back for ambulance services," said Boone Commissioner Al Halstead.

The Boone County Commission is expected to withdraw the complaint, and Prosecuting Attorney Keith Randolph said he wouldn't pursue criminal charges against Lengyel.

Lengyel reimbursed the ambulance authority the day he was served with a copy of the complaint.

"It looks like it was paid in full, which was the whole goal of the civil action," Randolph said. "Once we confirm the check has cleared, the, of course, there won't be any more civil action because there's nothing else to ask for."

In 2012, Lengyel asked ambulance authority board members to "front" him the money so he could join the new retirement plan – and promised to pay back the loan, according to the commission's complaint. But the ambulance board never discussed the loan amount, interest rate, or whether the loan was legal, the complaint alleges.

In 2013, ambulance board President Howard Green and board member Joseph Gollie signed loan papers with Lengyel, who agreed to pay back the money in monthly installments of \$350 after he retired. The board never voted on the loan agreement, and most board members never saw the contract, according to the complaint filed in Boone County Circuit Court.

In the complaint, Boone commissioners alleged that Lengyel used his public position for private gain – a violation of state ethics laws. Commissioners also argued Lengyel's loan should be voided because

it's illegal. He had no legal right to use \$103,000 in ambulance authority funds for a personal loan, according to the complaint.

Last month, the Boone County Commission took steps to remove Green and Gollie from the ambulance board. Boone commissioners are asking the state Supreme Court to appoint a three-judge panel to oust Green and Gollie, who allegedly gave Lengyel the go-ahead for the illegal loan.

“That’s still in the works,” Halstead said. “We were hoping they would resign, but they haven’t resigned yet.”

Boone commissioners also recently appointed four new members to the ambulance board.

Lengyel said the ambulance authority has increased revenues, bought 10 new ambulances and given four pay raises to employees since he was hired as director seven years ago. He said he plans to stay on the job.

“We’ve done so much good for the county,” he said. “I’m glad this is paid back, and I hope this is all behind us. We’re going to try to run the best ambulance agency we can.”

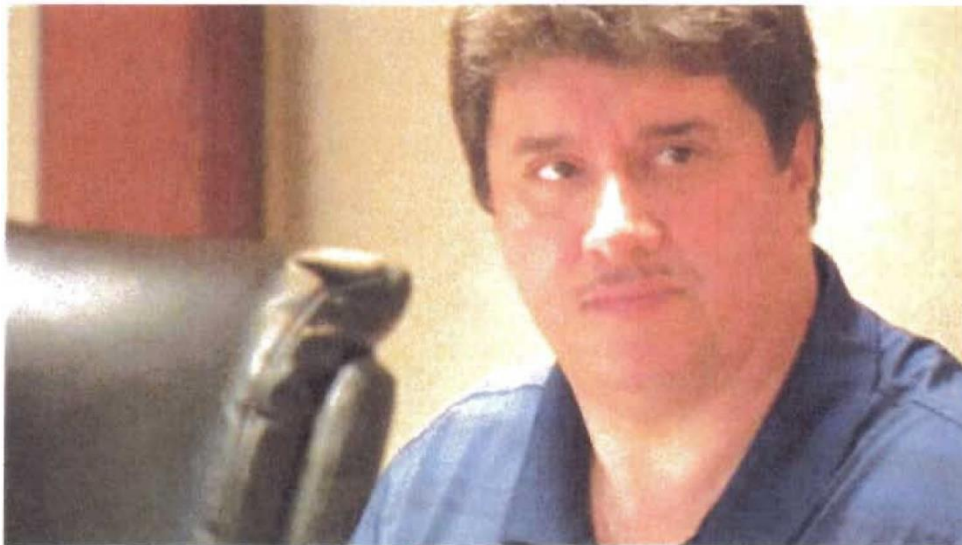
Reach Eric Eyre at ericeyre@wvgazette.com, 304-348-4869 or follow @ericeyre on Twitter.

Ambulance director fired

Barker named president of ambulance authority board

First Posted: 8:18 pm - November 12th, 2015 Updated: 9 57 am - November 13th, 2015

By Fred Pace - fpacespace@civitasmedia.com



Lengyel

RACINE — Following a unanimous vote, the Boone County Ambulance Authority fired its director Randy Lengyel.

"We understand this is someone's employment, but we must do the right thing," said Kevin Hill, a B.C.AA board member. "We took time to make the right decision."

Lengyel and the board's former president and vice president came under fire after the authority gave the director a \$103,000 loan, which turned out to be illegal and unethical.

Lengyel paid back the loan and Boone County Prosecuting Attorney Keith Randolph dropped pursuing criminal charges. However, it didn't keep the new and old, current board members from voting unanimously to terminate Lengyel's job.

The Boone County Ambulance Authority made several decisions during its regular session meeting on Thursday evening at its headquarters in Racine

The board announced at its last meeting its president Harold Green had submitted a letter of resignation to the Boone County Commission, which was accepted. The board announced former vice president Joe Gollie, who had stepped in the president's position after Green left, also submitted a letter of resignation, which was unanimously accepted by the new board.

Bryan Justice, a 25-year veteran paramedic, was voted by the board to be the agency's interim director at its last meeting and has been serving in that capacity until the board's personnel committee recommends a candidate after going through the hiring process.

"I just want to create a family atmosphere here," Justice said when he was appointed. "I will go to bat for them, we are going to do the very best that we can do while I'm in the interim spot."

Justice gave a report to the board that had many recommendations to save the ambulance authority money.

Justice says the agency's cell phone bill can be cut, which is currently \$1,736 a month. He also recommended not using the GPS tracking on each ambulance until or unless they can be connected to the county's 911 emergency services system.

"I also recommend we change from the Exxon card to the State P card for fleet fuel purchases," Justice said.

Justice also spoke about several other issues facing the ambulance authority and recommended the board's new president Josh Barker attend a scheduled meeting the agency's billing company.

Barker continued to say the board's top priority must be earning back the trust of employees, the community and making sure the ambulance levy passes.

"If we earn the trust of our employees we will earn the trust of our citizens. That's got to be number one and we've got a long road to haul," Barker said. "We have made big changes and taken vast step forward. We will continue to do what's best for the community and the employees of this authority."

Barker and the board authorized the authority's attorney to write a letter to the Boone County Commission to recommend not giving support for a new private ambulance company wanting to set up an ambulance business in Boone County.

Justice agreed with Barker saying the new company may want levy monies and also confuse residents about where their ambulance service and paramedics are coming from.

"I truly believe this would not be in the best interests of the people of Boone County," Justice said.

The Boone County Ambulance Authority's next scheduled meeting will take place starting at 5 p.m. on Thursday, Dec. 17.

Fred Pace is an editor for Civitas Media. He can be reached at 304-369-1165, ext. 1661, in Madison; at 304-752-6950, ext. 1729 in Logan; by email at fpac@civitasmedia.com or @fcpace62 on Twitter.

Ex-Boone ambulance director's ethics deal OK'd

By Phil Kabler

Ethics Commission members have approved two conciliation agreements for violations of the state Ethics Act, including a \$5,000 fine and public reprimand for the former executive director of the Boone County Ambulance Authority, who illegally obtained a \$103,000 no-interest loan from the authority in order to buy into a more lucrative state pension plan.

Commissioners found that Randall Lengyel violated the Ethics Act's prohibition against using public office for private gain by convincing the president and vice president of the authority's board of directors to approve the loan, which allowed him to transfer from the Public Employees Retirement System to an EMS Retirement System — created under legislation he had sought a year earlier.

Facing a civil suit in Boone County, Lengyel repaid the loan last Oct. 6, according to the agreement.

In addition to the fine and reprimand, Lengyel is required to complete an ethics training course as part of the agreement.

Commissioners also imposed a \$5,000 fine and ordered reimbursement of \$1,339 in investigation costs against former West Liberty University executive director of planning Ron Witt for conducting work as a private real estate agent from his university office during normal work hours.

Witt, who was an agent for Kennan and Kennan Realtors in nearby Wheeling, argued that former West Liberty president Robin Capehart in 2012 had given him permission to engage in part-time real estate work from his campus office.

Capehart resigned as West Liberty president last March, and in June entered into a conciliation agreement with the Ethics Commission, paying \$10,000 in fines and costs, for using university resources and employees to benefit his privately owned independent film production company.

Under the agreement, Witt admitted he had violated the Ethic Act's ban on use of public office for private gain. In addition to the fine and costs, Witt also must complete an ethics training course.

Conciliation agreements are the equivalent of plea bargains, allowing individuals charged with Ethics Act violations to avoid public hearings on the charges.

Also during Thursday's Ethics Commission meeting:

Executive Director Rebecca Stepto said the commission processed a record 153 formal complaints of possible ethics violations in 2015. The commission also approved 16 conciliation agreements resolving ethics violations, set statements of charges and hearing dates for 10 other ethics violations, and conducted two public hearings on ethics charges.

Stepto said there were more statements of charges issued in 2015 than the prior 15 years combined.

Conversely, she said, the commission issued just 30 advisory opinions in 2015, a number that continues to decline, since when there are questions on issues of ethics, commission attorneys can frequently refer to precedent-setting opinions previously issued over the nearly 27-year history of the Ethics Commission.

n Stepto said she had checked with the Division of Motor Vehicles about the possibility of having the division produce identification cards for lobbyists, but was quoted a cost of about \$25 a card, which would be more than \$10,000 to provide IDs for the more than 400 registered lobbyists.

Stepto said that the commission in the past has provided inexpensive printed ID badges to lobbyists, but nothing in the Ethics law requires the commission to provide lobbyists with IDs.

Commissioner Betty Ireland said that, if at some point the Legislature requires lobbyists to have ID badges, those costs should be added to their lobbyist registration fees.

Ireland speculated that lobbyists could push to be allowed to bypass new security checkpoints at the Capitol by showing their commission-issued ID badges.

"It would not surprise me if at some time, they get special dispensation if they have an ID badge," she said, adding, "Looking down the road, if the security folks at the Legislature make us do that, we should not absorb the cost."

n Commissioners approved several employment exemptions, authorizing state employees to seek employment with regulated private sector businesses. Those exemptions included Justin Southern, longtime spokesman for state Auditor Glen Gainer, who is not seeking re-election.

Reach Phil Kabler at philk@wvgazette.com, 304-348-1220, or follow @PhiiKabler on Twitter.



August 21, 2013

Feds examine DOH contract with Ohio firm

by Eric
Eyre
Staff
writer

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.

Reach Eric Eyre at ericeyre@wvgazette.com or 304-348-4869.

February 20, 2014

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 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.

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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.white@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 a while 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.

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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.

Indicted DOH boss hung banners on trailers for candidates

By Eric Eyre



SAM OWENS | Gazette-Mail

For several years, former state Division of Highways official Bob Andrew hung banners for political candidates on truck trailers on this site, along Interstate 79 near Weston, and several other sites. The I-79 site now features a banner for state Sen. Mike Romano, D-Harrison, who said he didn't hire or pay Andrew to hang the banner-- an assertion backed by his campaign finance reports.

During his second run for governor, Bill Maloney became intrigued with the idea of hanging campaign banners on semi-truck trailers beside major highways across West Virginia, but the Republican took a pass on the proposal after fielding a telephone call from Bob Andrew, a former state Division of Highways boss who put up the signs as part of a side business.

"Bob Andrew was mad because Tomblin's campaign hadn't paid him his bonus for the first win," Maloney, who twice lost races to Gov. Earl Ray Tomblin, recalled last week. "He wanted \$25,000 to start, but after asking pointed questions about how the money was going to be spent, we didn't get a straight answer, so we just didn't do it.

"Of course, he put Tomblin's signs up again."

Andrew, who killed himself with a shotgun last month just hours after being indicted on federal racketeering charges, hung campaign banners on trailers beside West Virginia highways for numerous political candidates--mostly Democrats--over the past decade, a review of campaign finance reports shows.

Andrew's trailer-banner business likely dates back further, according to political consultants, perhaps to Gov. Cecil Underwood's campaign in 1996.

"There are a lot of candidates who put money into Bob Andrew's pockets for the trailers, and he always had them in the best spots," Maloney said.

Political candidates who have enlisted Andrew's services include former state Sen. Sam Cann of Harrison County, U.S. Sen. Joe Manchin, former Supreme Court Justice Elliot "Spike" Maynard, agriculture commissioner candidate Mike Teets, state Sen. Doug Facemire of Braxton County, and Tomblin, according to campaign finance reports.

In 2011, Tomblin's campaign paid Andrew \$3,500 for "trailer and land rental," campaign finance records show. The campaign also paid Matt Tuttle, who worked under Andrew at DOH and was convicted on federal charges, \$7,100 that year. Additional money was spent on trailer rental fees and banner costs.

Andrew, who headed the DOH equipment division in Buckhannon for 16 years and last served as special assistant to Transportation Secretary Paul Mattox, arranged everything for the candidates. Andrew negotiated with landowners who leased their property for the trailers. He ordered the campaign banners from a Pennsylvania company. He had the trailers delivered and parked beside interstate highways.

And he had DOH workers at least some of the time hang the banners, according to federal prosecutors.

A 29-count indictment against Andrew alleged that he used state employees and equipment to take part in political activities on state time among a host of other charges.

In 2011, Andrew directed his DOH subordinates to solicit and collect thousands of dollars in contributions for Tomblin's gubernatorial campaign, according to the indictment.

Andrew also ordered DOH workers to hang Tomblin campaign banners on the truck trailers, the indictment alleged. Andrew had DOH employees submit falsified documents so they'd be reimbursed by the state for their time hanging banners for Tomblin, according to the charges.

Andrew was found dead at a car wash just outside Bridgeport's city limits at 10:30 p.m. on Sept. 1. He died of a gunshot wound to his head.

A note and a shotgun were found in Andrew's vehicle. Authorities said Andrew took his own life. He was 77.

Tomblin and Manchin have said they didn't have any knowledge that Andrew was using state workers to put up the banners.

"The Tomblin campaign paid Bob Andrew for specific services, including signage," said Tomblin's press secretary, Shayna Varner. "It was the campaign's understanding he conducted that business on his own time with his own resources, and he was compensated separately from his state salary."

State Sen. Mike Romano, D-Harrison, said he had repeatedly witnessed Andrew hanging up campaign banners on truck trailers, but never during regular work hours or with DOH employees.

"Over the years, I've seen him do 15 or 20 of those, and I've never seen him do it on state time, and I've never seen him use any state employees," Romano said. "He'd go out and do the work himself, and it wasn't easy for a guy in his 70s."

One of Romano's campaign banners from his 2014 race—still hangs across a truck trailer on a hillside along Interstate 79 near Weston. Romano said he didn't hire or pay Andrew to hang the banner—an assertion backed by his campaign finance reports. But Andrew has hung banners for other candidates on the same site in previous years, records show.

In August 2013, U.S. Attorney William Ihlenfeld's office served a search warrant at the DOH's equipment office, which Andrew headed, in Buckhannon. Federal and state authorities had started investigating Andrew months earlier.

"I would have never asked him to help out with my campaign while he was undergoing the scrutiny he was undergoing," Romano said. "He wanted to help people he liked, and the [trailer campaign banner] was a way to help."

Bill Phillips, a GOP campaign consultant based in Elkins who ran Teets' campaign for agriculture commissioner in 2008, said he wasn't sure whether Andrew supported Teets or other Republican candidates—but Andrew was willing to put up banners on trailers for them.

Candidates see the banners as effective campaign advertising, Phillips said.

"You're used to billboards, but you're not used to going down the road and seeing a trailer sitting in a field that says, 'Elect somebody for governor,'" Phillips said. "When you're running against [former Agriculture Commissioner] Gus Douglass, you're looking for name ID. You're looking for any way to get your name out there, to be seen, in a way that doesn't cost a lot of money."

While Andrew worked for candidates from both parties, he gave campaign contributions only to Democrats, campaign finance reports show. Andrew wrote 20 checks totaling \$4,150 to Democratic candidates since 2008. Those receiving Andrew's contributions include Tomblin, Manchin, state Auditor Glen Gainer, Agriculture Commissioner Walt Helmick and Treasurer John Perdue.

Maloney said Andrew came looking for him—not the other way around—and contacted Maloney's campaign manager in 2012 with the proposition of hanging campaign banners on truck trailers. Over the years, Andrew parked trailers beside major highways in Jane Lew, Weston, Martinsburg, Fairplain, Huntington, Sam Black Church, Sutton, Beckley and other locations, according to campaign finance reports.

The \$25,000 price tag for the trailers and banners sent up a red flag, Maloney said.

"I asked, 'What do we get for that?' And he said, 'I can't tell you, but it will be good,'" Maloney recalled. "He also wanted bonuses and all this other stuff if we won the election. I wasn't going to be part of anything like that."

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Racketeering indictment returned against former WV Division of Highways official

CLARKSBURG, WEST VIRGINIA A federal grand jury returned a racketeering indictment today against the former director of the West Virginia Division of Highway's Equipment Division, United States Attorney William J. Ihlenfeld, II, announced.

Robert Glen Andrew, II, of Bridgeport, West Virginia, has been charged in a 29-count indictment which alleges violations of the Racketeer Influenced and Corrupt Organizations Act. Andrew is alleged to have used his position to create a culture of corruption within the Division of Highways, and to have used the Division of Highways as a vehicle to engage in racketeering activity.

Andrew allegedly abused his position of trust in order to use state resources, including employees and equipment, to engage in political activity on state time. He is also alleged to have engaged in bid-rigging by creating non-competitive bid specifications that favored particular vendors and that did not seek to obtain the best value for the State of West Virginia. Andrew is also alleged to have violated, and to have directed others to violate, the statutes and regulations which govern the use and disposition of federal excess property. Andrew is also accused of having tampered with a witness and with documents.

Ohio corporation Mo-Trim, Inc., a business engaged in the building of large commercial mowers, was named in the indictment along with Andrew. Mo-Trim is a vendor which held a mower parts contract with the Division of Highways and which is alleged to have been involved in the preparation of non-competitive bid specifications which did not seek to obtain the best value for the State of West Virginia but instead specifically benefitted Mo-Trim.

Both Andrew and Mo-Trim, Inc. are charged with seven counts of "Wire Fraud," and one count of "Racketeer Influenced and Corrupt Organizations Act Conspiracy." Andrew, age 77, is further charged with eight counts of "Mail Fraud," seven counts of "Causing Theft of Government Property," four counts of "Wire Fraud," one count of "Document Tampering," and one count of "Witness Tampering."

Assistant U.S. Attorneys Jarod Douglas and Sarah Montoro, along with Special Assistant U.S. Attorney John Parr, are prosecuting the case on behalf of the government. The West Virginia State Police, the West Virginia Commission on Special Investigations, the General Services Administration Office of Inspector General, the Federal Bureau of Investigation, and the Internal Revenue Service – Criminal Investigation conducted the inquiry.

An indictment is merely an accusation. A defendant is presumed innocent unless and until proven guilty.

Indicted ex-WVDOH official commits suicide, police say

By Eric Eyre

Just hours after he was indicted on federal racketeering charges Tuesday, a former West Virginia Division of Highways official apparently committed suicide near Bridgeport in Harrison County, authorities said.

Bob Andrew, who headed the DOH equipment division in Buckhannon for 16 years and last served as special executive assistant to Transportation Secretary Paul Mattox, was found dead at 10:30 p.m. Tuesday in a vehicle registered to his name at a car wash just outside Bridgeport's city limits.

'We're waiting for official confirmation from the medical examiner's office, but all indications point to that it was Mr. Andrew,' said Harrison County Sheriff Albert Marano. "We do not suspect any foul play at this time."

Andrew apparently died of a gunshot wound to his head, according to two law enforcement sources. A note and shotgun were found in the vehicle.

Andrew was indicted late Tuesday after noon on charges that he created a "culture of corruption" within DOH and using state employees to work on Gov. Earl Ray Tomblin's campaign in 2011, according to the indictment.

The 29-count indictment alleges Andrew used state workers and equipment to take part in political activities on state time, rigged bids for favored vendors and directed workers to violate laws that govern the selling off of surplus vehicles and equipment. Andrew, 77, also is charged with tampering with a witness and falsifying DOH documents.

In 2011, Andrew directed DOH workers to solicit and collect thousands of dollars in contributions for Tomblin's gubernatorial campaign on state time, the indictment alleges. Andrew also ordered DOH workers to hang Tomblin campaign banners on semi-truck trailers throughout West Virginia, federal prosecutors allege. Andrew had subordinates submit falsified documents so they'd be reimbursed by the state for their time hanging banners for Tomblin, the indictment states.

The indictment also names Mo Trim Inc., a Cambridge, Ohio-based company that did business with the DOH equipment division under Andrew's watch. Mo Trim allegedly worked with Andrew to rig bids and secure a lucrative state contract for mower parts.

Andrew also allegedly directed employees to misuse the contract and purchase assembled components that were installed on tractors, according to the indictment. Andrew also had state employees create documents to try to cover up the scheme, federal prosecutors allege.

In August 2013, U.S. Attorney Bill Ihlenfeld's office simultaneously served search warrants at the DOH's equipment office in Buckhannon and at Mo Trim's office in Ohio.

Andrew took part in schemes to defraud the state from 2009 through August of last year, according to the indictment.

Last year, two former DOH supervisors who worked for years under Andrew at the equipment division pleaded guilty to making false statements to federal investigators during the investigation.

Edward Tuttle, who resigned in April 2014, admitted that he lied about his role in delivering a surplus DOH truck to a buyer at the Port of Baltimore in Maryland. The sold truck was to be shipped to Africa.

The second DOH supervisor, Barry D. Thompson, was charged with lying to investigators about DOH employees "repairing and replacing parts for a dump truck on state time and state expense," according to a federal indictment. Shortly before his scheduled jury trial, Thompson pleaded guilty to providing false information to a West Virginia state trooper. Thompson agreed to cooperate with the federal investigation.

Thompson admitted that he directed a state employee to repair a dump truck after it had been sold at a state auction. Thompson also said a state employee was ordered to travel in a state-owned vehicle to buy a new muffler for the dump truck. The muffler didn't fit the truck, and Thompson exchanged it for another. The muffler was purchased at a discounted rate provided to DOH.

State and federal authorities have been investigating DOH's equipment division for more than two years over allegations of bid rigging, misuse of taxpayer funds and political activities by DOH employees on state time.

The DOH equipment division buys trucks, bulldozers, graders, excavators, mowers and parts for state highway garages throughout West Virginia. The office has about 100 employees.

Andrew, who made \$82,764 a year as Mattox's special assistant, abruptly resigned in August 2014.

The equipment division case is being investigated by the U.S. Attorney's Office of Public Corruption Unit, State Police, the FBI and state Legislature's Commission on Special Investigations.

Neither Andrew nor his lawyers in Wheeling and Clarksburg could be reached for comment Tuesday.

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Indicted ex-highways official's body identified

By The Associated Press

CLARKSBURG, W.Va.-Police say the state medical examiner has officially identified a body found at a car wash as an indicted former West Virginia highways official.

Harrison County Sheriff Al Marano said Thursday that Robert Glen Andrew, 77, died from a self-inflicted gunshot wound.

Andrew was found at a car wash parking lot outside Bridgeport on the night of Sept. 1. Earlier that day, U.S. Attorney William J. Ihlenfeld II announced that a federal grand jury had indicted Andrew on federal racketeering charges.

Andrew formerly served as director of the Division of Highways' equipment division. The indictment alleged that he used state resources, including workers and equipment, to engage in political activity on state time. The indictment also accused Andrew of bid-rigging by creating non-competitive bid specifications that favor particular vendors.

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.

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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.**

Former DNR worker pleads guilty to state purchasing card misuse

By Eric Eyre

A former Division of Natural Resources employee will lose his state pension after pleading guilty Thursday to a felony charge of misusing a state purchasing card.

As part of a plea deal, prosecutors dropped a 22-count indictment against the DNR worker's son, a third-year law student at West Virginia University.

David P. Smith, who had been an engineering technician with the DNR for 18 years, was sentenced to two years of probation, after admitting he misused a state-issued Visa credit card — also known as a "P card" — to buy an air compressor. Smith kept the compressor at his home in Jackson County.

West Virginia State Police arrested Smith in June 2013 after he allegedly tried to sell a state-owned man lift to undercover officers at a parking lot outside the Division of Motor Vehicles office in Kanawha City. He drove a state vehicle to the site of the sting. A man lift is a piece of heavy equipment that hoists a person several stories in the air.

Smith, 58, initially was charged with embezzlement and misuse of state purchasing card, both felonies.

The Legislature's Commission on Special Investigation's started looking into suspicious purchases made on Smith's state-issued credit card in 2013. A 22-count indictment alleged that Smith used state funds to buy a generator, pressure washer, compressor and other equipment for personal use.

Smith also used a state purchasing card to lease a pavement roller from a company owned by his 29-year-old son, Jordan Dawson Smith **-and** used state funds to pay his son \$1,265 for concrete finishing work he never did, according to the indictment.

At Thursday's hearing, David Smith told Kanawha Circuit Judge James Stucky that he was pleading guilty because prosecutors agreed to drop all charges against his son.

"I'm just glad we're getting this over and that my son will be able to move on and graduate from law school and live his life," Smith said.

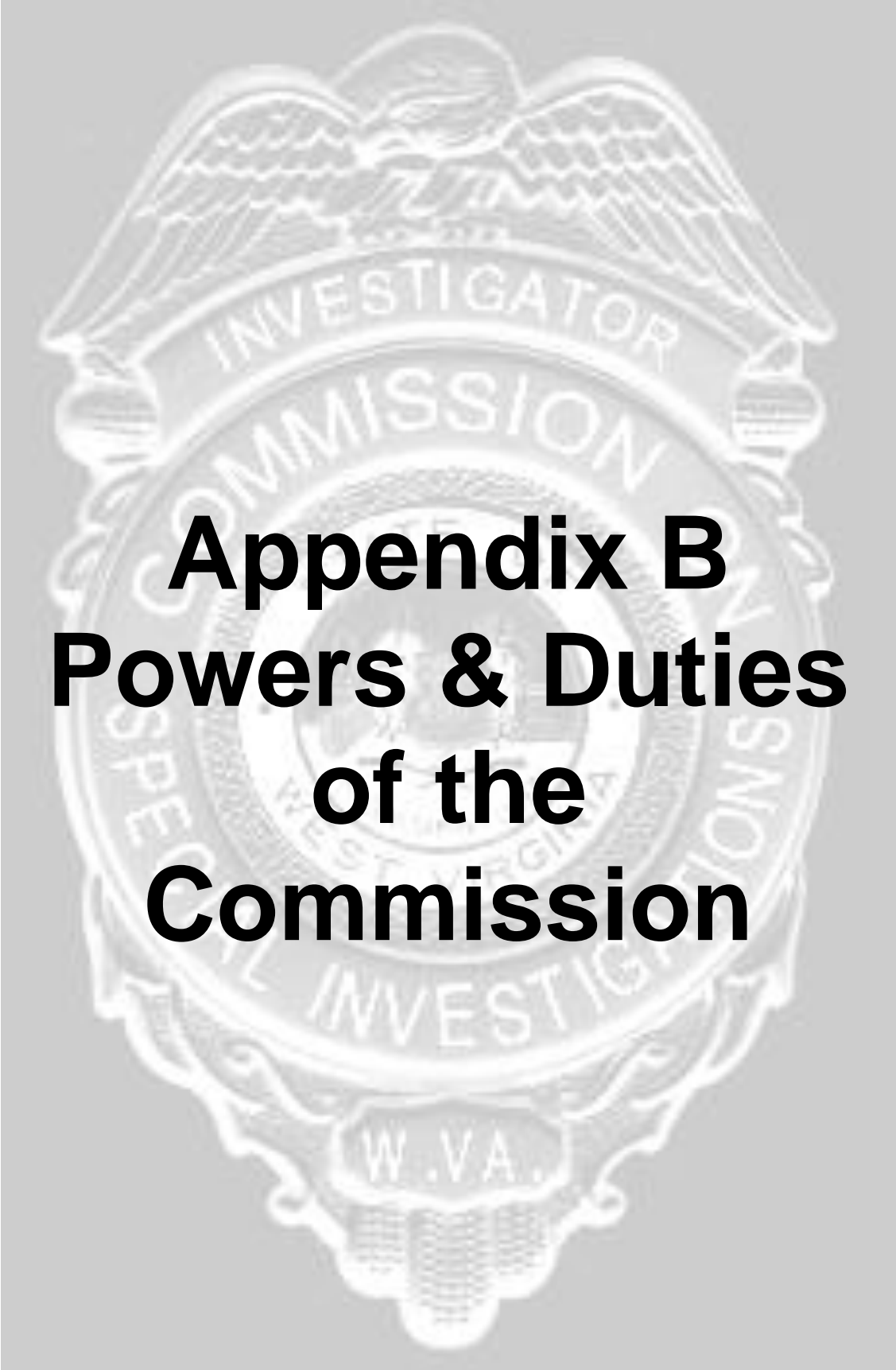
Smith was fired from the DNR after he was arrested. Smith told Stucky that he hasn't worked the past two years.

"All this property is in the custody of the state," said Ronni Sheets, Smith's lawyer. "The state is out nothing."

Kanawha prosecutors plan to send a letter to the state Consolidated Public Retirement Board, alerting the agency about Smith's felony conviction and recommending that he not receive his state pension. Sheets said Thursday that Smith would not contest the loss of his retirement benefits.

"His biggest concern was to try to protect his son from whatever could come from a [jury] trial," Sheets said.

Reach Eric Eyre at ericeyre@wvgazette.com, 304-348-4869 or follow @ericeyre on Twitter.



**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.

The background of the page features a large, light gray watermark of the West Virginia State Police seal. The seal is circular with an eagle at the top. The text "INVESTIGATOR" is arched above the eagle. The outer ring of the seal contains the words "SPECIAL INVESTIGATIONS" on the left and "COMMISSIONERS" on the right. At the bottom of the seal, it says "W.V.A.". In the center of the seal, there is a smaller emblem with the text "STATE OF WEST VIRGINIA".

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.

WEST VIRGINIA



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