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**West Virginia Legislature  
Joint Committee on Government & Finance**



**Commission on  
Special Investigations**

**301 Eagle Mountain Road  
Room 218  
Charleston, WV 25311-1061**

***President of the Senate  
Jeffrey Kessler  
Co-Chairman***

***Speaker of the House of Delegates  
Richard Thompson  
Co-Chairman***

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**Thirty-first Annual Report  
to the  
West Virginia Legislature  
June 30, 2011**

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301 Eagle Mountain Road  
Room 218

WEST VIRGINIA LEGISLATURE  
**Commission on Special Investigations**

CHARLESTON, WEST VIRGINIA 25311-1061

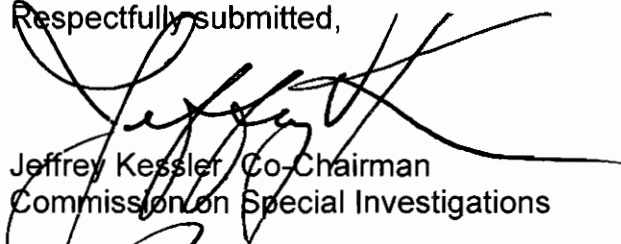
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January 11, 2012

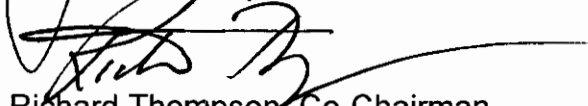
West Virginia Legislature  
Charleston, West Virginia

Pursuant to Chapter 4, Article 5, Section 2 of the West Virginia Code, we submit the Thirty-first Annual Report of the Commission on Special Investigations to the West Virginia Legislature.

Respectfully submitted,



Jeffrey Kessler, Co-Chairman  
Commission on Special Investigations



Richard Thompson, Co-Chairman  
Commission on Special Investigations

JK:RT:lmw

## TABLE OF CONTENTS

	Page
Introduction	1
I. Commission Members and Staff	1
II. Special Appreciation	2
III. Activities of the Commission:	2
Public Defender Services	3
West Virginia Development Office	4
Office of Economic Development	5
West Virginia Lottery	5
Department of Administration	6
Bluefield Sanitary Board	7
IV. Newspaper Articles	
V. Appendix A: Powers and Duties of the Commission	1a
VI. Appendix B: Rules of the Commission	1b

Pursuant to Chapter 4, Section 2, Article 5 of the West Virginia Code, the Commission on Special Investigations presents the Thirty-first Annual Report to the West Virginia Legislature. This Report covers the Commission's activities from July 1, 2010 through June 30, 2011.

### **I. Commission Members and Staff**

The Commission on Special Investigations is comprised of ten Legislators: Five Senators and five Delegates. The following Legislators represent the membership of the Commission on Special Investigations as of June 30, 2011:

<u>Senate</u>	<u>Appointed to Commission</u>
Jeffrey Kessler - D (Co-Chairman)	2011
Mike Hall – R	2010
Corey Palumbo - D	2011
Donna Boley - R	2001
John Unger – D	2011

<u>House</u>	<u>Appointed to Commission</u>
Richard Thompson - D (Co-Chairman)	2007
Brent Boggs - D	2009
John Ellem - R	2007
Patrick Lane – R	2009
Harry Keith White - D	2007

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

Staff members of the Commission on Special Investigations as of June 30, 2011:

<u>Staff Member</u>	<u>Title</u>
Gary W. Slater	Director
Charles R. Bedwell	Investigator
Herbert R. Cogar	Investigator
Carl E. Hammons	Investigator
Roy M. Hutchison II	Investigator
James S. Powers	Investigator
Steven E. Staton	Investigator
Lisa M. Wilkinson	Administrative Assistant

**II. Special Appreciation**

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

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

**III. Activities of the Commission (July 1, 2010 through June 30, 2011)**

During the course of this fiscal year, the Commission on Special Investigations opened seven investigative files and closed six investigations. As of June 30, 2011, there were 80 active investigations. The Commission met 10 times between July 1, 2010 and June 30, 2011. During these meetings the Commission staff apprised members of the alleged wrongdoing by agencies, individuals and/or firms conducting business with the State of West Virginia. Commission members also reported matters presented to them by their constituents, State employees, other legislative commissions, committees and fellow legislators.

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

Among the matters presented were the following:

### **Public Defender Services**

In September 2006, the Commission on Special Investigations received a complaint from the West Virginia Public Defender Services office of possible billing irregularities submitted by Attorney Heidi Myers.

After receiving the original information, investigators began reviewing billing records and conducting interviews. It was during this time the US Attorney's Office for the Northern District of West Virginia became involved in the case, as well as US Postal Inspectors.

On November 17, 2006, a Federal search warrant was executed on Myer's Law Office, and others were served Federal Grand Jury subpoenas to appear before a Federal Grand Jury in Wheeling, West Virginia on December 5, 2006 at 9:00 a.m. Myers failed to appear at the appointed time, and at 4:00 p.m. on December 5, 2006, Myers was arrested by the US Marshals Service. Myers was released on a \$15,000 bond for the failure to appear warrant issued by Judge Fred Stamp.

In May 2007, a bench trial was held before Judge Stamp on the failure to appear.

In June 2007, Attorney Heidi J. Myers and her Office Manager, Nancy Burkhart, were indicted by a Federal Grand Jury on 99 counts of mail fraud, 12 counts of wire fraud and one (1) count of conspiracy.

In July 2007, court hearings were held reference contempt charges against Myers.

In April 2008, the West Virginia Supreme Court annulled Myers' law license.

In August 2008, Myers was found to be in criminal contempt (obstruction of justice) and was sentenced to four (4) months in Federal prison by Federal Judge Stamp.

Myers has served her prison time on the contempt charge.

In April 2010, Attorney Heidi Myers pled guilty to one (1) count of mail fraud and one (1) count of wire fraud. In part the plea agreement required Myers to make restitution to the State of West Virginia for no less than \$200,000 and not more than \$400,000.

Myers began cooperating with the US Attorney's office in the prosecution of Myers Law Group Office Manager Nancy Burkhart, per her plea.

In May 2010, Burkhart was indicted on four (4) counts of perjury for lying to a Federal Grand Jury in November and December 2006.

In November 2010, Nancy Burkhart pled guilty to one count of perjury. In May 2011, she was sentenced to three years of supervised release and given a \$10,000 fine. Burkhart is required to be gainfully employed during this time period and if she is not employed, she must do 20 hours of community service per week.

As of the writing of this report, this office has begun two other investigations relating to overbilling by lawyers to the Public Defender Services.

### **West Virginia Development Office**

In the continuation of a case opened in September 2005 into the misappropriation of over four million dollars in State and Federal grant money relating to a failed wireless internet project in Parkersburg, West Virginia, a joint investigation between the IRS Criminal Investigation Division, US Department of Agriculture's Inspector General's office and the Commission on Special Investigations resulted in the disposition of numerous criminal charges.

In September 2008, R. Scott Truslow and Mentorgen LLC of Worthington, Ohio pled guilty to money laundering conspiracy, followed by a plea by Heidi C. Laughery in February 2009, also to money laundering conspiracy.

In September 2009, A. Michael McPeck, President of Mountain State College in Parkersburg, WV, and James Larry Hymer, former Chief Financial Officer of Mentorgen LLC, were indicted by a Federal Grand Jury.

Heidi Laughery and R. Scott Truslow were sentenced in April 2010. Laughery received a sentence of 18 months in prison; three (3) years supervised release, and was ordered to pay \$848,871 in restitution. Truslow received a sentence of six (6)

months home confinement, two (2) years supervised release, and was ordered to pay \$548,871 in restitution.

Mentorgen LLC was sentenced in May 2010, received supervised probation and ordered to pay restitution to the government in the amount of \$1,500,000.

In July 2010, A. Michael McPeek entered a plea of guilty to the charge of obstruction of a Federal audit. As a result of that, McPeek was sentenced to 36 months of supervised probation, along with four months of home confinement. He was also fined \$3,000.

Also in July 2010, J. Larry Hymer was found guilty by a jury trial for obstruction of a Federal audit and obstruction of an official proceeding which resulted in his being sentenced to 48 months of supervised probation and six months home confinement. Hymer was also fined \$15,000.

Along with their criminal convictions and penalties, Laughery, McPeek, Hymer, Truslow and Mentorgen LLC received five years disbarment from all Federal Government programs and permanent disbarment for all USDA programs.

It should be noted this case took six years to complete due to its complex nature.

### **West Virginia Lottery**

Early in 2008, Federal officials requested that investigators with the Commission on Special Investigations join an ongoing investigation of matters associated with the West Virginia Lottery. Two major areas of inquiry included improprieties involving staff of the West Virginia Lottery Commission, and criminal violations committed by machine operators licensed by the WV Lottery Commission. This investigation was led by the United States Attorney's office for the Southern District of West Virginia, and involved special agents from both the Internal Revenue Service – Criminal Investigation Division, and the Federal Bureau of Investigation.

On May 2, 2008, Carolyn Kitchen, an employee of the West Virginia Lottery Commission, signed a plea agreement with the US Attorney's office, wherein she agreed to enter a plea of guilty to the felony charge of making a false statement to federal agents. She admitted that in February 2008 she lied to agents involved in the



investigation of Joseph Cleveland Ferrell, the owner of Southern Amusement, one of the largest video lottery operations in West Virginia.

Kitchen was employed as an investigator with the Lottery Commission and was responsible for inspecting many of the machines operated by Southern Amusement. While she had earlier denied it, she admitted Ferrell made cash payments in exchange for her immediately responding to service calls on his lottery machines and for other favorable treatment. Ferrell had known Kitchen since she was a teenager, and assisted her in securing her position with the Lottery Commission. Ferrell was a member of the West Virginia Legislature at the time.

On June 3, 2009, both Joseph Cleveland Ferrell and his corporation, Southern Amusement, were indicted on a multitude of felony charges which included: racketeering; interstate travel in aid of racketeering; mail fraud; bribery; obstruction of justice; willful failure to collect, account for and pay over employment taxes; and bribery of a lottery investigator, a mayor, and a sheriff elect.

In February 2011 Carolyn Kitchen, a former Inspector for the WV State Lottery Commission, was sentenced to five years probation and fined \$1,000 for lying to investigators about accepting gratuities from Joe C. Ferrell.

Also in February former Ferrell employee Mark Cantrell pled guilty to aiding and abetting Social Security fraud for another of Southern Amusement's employees.

In June 2011, Ferrell was sentenced to two years in Federal prison and ordered to pay \$250,000 in fines and \$600,000 in forfeiture.

### **Department of Administration**

In August 2007, agents from the Criminal Investigation Division of the Internal Revenue Service requested that Commission investigators assist in an ongoing criminal investigation of Clark Diehl, the owner of Wallpapers In Stock, a store in Charleston, West Virginia which specializes in wall coverings and window treatments. The investigation was led by the United States Attorney's office for the Southern District of West Virginia, and also involved agents of the Federal Bureau of Investigation. At the time of this request, Diehl was already under investigation for federal income tax evasion.

Subsequent investigative efforts revealed Diehl was involved in a number of illegal activities including the falsification of competitive bids submitted to the Governor's office in association with a transaction which occurred in 2006. More specifically, Diehl fabricated two written price quotations from non-existent business enterprises, thereby making it appear the price offered by Wallpapers In Stock was the lowest competitive bid, as required by State statute. This falsification resulted in Diehl being paid over \$29,000 by the State in association with this transaction.

On Friday, December 4, 2009, an information was filed in US District Court in Charleston charging Clark Diehl with one (1) count of income tax evasion, and one (1) count of mail fraud. The mail fraud charge arose as a result of the above described transaction.

In January 2010, Clark Diehl entered a plea of guilty to these charges, and his sentencing was initially scheduled for May 19, 2010. As of June 30, 2011, Diehl's sentencing has been continued.

### **Bluefield Sanitary Board**

In February 2007, CSI received information from Bluefield, West Virginia city officials that monies were being embezzled from the Bluefield Sanitary Board through various schemes. The Bluefield Sanitary Board serves both the City of Bluefield, West Virginia and the Town of Bluefield, Virginia, and operates as a stand-alone entity, funding itself through sewer fees and grant monies. The Sanitary Board has a governing Board of Directors that oversees Sanitary Board operations. The Board's day-to-day operations are the responsibility of the Sanitary Board Executive Director. Contemporaneous with this information being provided to CSI, the United States Attorney's Office for the Southern District of WV received similar information and a joint investigation was undertaken into the allegations.

CSI investigators were granted access to Sanitary Board financial records and several suspected fraudulent schemes were identified whereby hundreds of thousands of dollars were being siphoned from the Sanitary Board. The suspected schemes involved the then current Sanitary Board Executive Director, the Board Maintenance Supervisor, the Board Line Crew Supervisor, the Manager of the Board's West Side

Treatment Plant, and several other individuals. The suspected schemes involved multiple non-existent companies that received payments from the Sanitary Board for products and services not received, employees who used Sanitary Board resources for personal gain, the direct embezzlement of Sanitary Board funds from an "off-balance sheet" bank account, and the receipt of goods and services by employees that were paid for by the Sanitary Board.

The suspected schemes and fraudulent activities identified included the following:

- Hundreds of dollars in Sanitary Board funds were expended to ship, via Federal Express, personal items of a Sanitary Board employee
- A Sanitary Board employee arranged the installation of a new heat pump at the employee's residence with the unit and installation being paid for by the Sanitary Board
- Sanitary Board employees regularly falsified expense accounts
- "Bonuses" were given to select employees without the knowledge or consent of the Sanitary Board's Board of Directors
- Sanitary Board employees were regularly directed to perform work of a personal nature for other Sanitary Board employees
- A Sanitary Board employee directed the purchase of new suspended ceiling components for the Sanitary Board's West Side Treatment Plant. These materials were then used by the employee in the employee's residence
- A Sanitary Board employee used a Sanitary Board credit card to purchase hundreds of dollars in items used by the employee at the employee's residence and personal business
- The Sanitary Board paid thousands of dollars for hay and straw it did not receive when Sanitary Board employees submitted fictitious invoices
- The Sanitary Board was invoiced under the name of several actual and fictitious companies for the hauling of sewer sludge, hauling of gravel, work on farm roads where sludge was allegedly delivered and for road repairs (asphalt paving) when these services were not performed
- The Sanitary Board's equipment, material and personnel were used to install 1,400 feet of sewer line to a private residence where a Sanitary Board employee invoiced the property owner using a fictitious company and the Sanitary Board employee received the proceeds
- Various trucks, trailers and equipment were invoiced to the Sanitary Board, however they were never delivered to the Sanitary Board

- A Sanitary Board employee authorized employees to purchase automotive parts and building materials for use by the employee, with the items being paid for by the Sanitary Board and installed on the employee's personal vehicles and being used at the employee's residence and personal business
- An "off balance sheet" bank account was established by Sanitary Board employees whereby monies totaling several thousand dollars were collected in the name of the Sanitary Board, deposited and then expended by an employee for items not used by the Sanitary Board
- Sanitary Board employees and equipment were used to transport and erect temporary horse stalls owned by the City of Bluefield, West Virginia, for private entities, and the Sanitary Board employees directed the payments received to an inactive bank account in the name of a fictitious company operated by one of the Sanitary Board employees, for the purpose of converting the payments to cash which was "split" among Sanitary Board workers involved
- An inspector paid under a contract with the Sanitary Board actually spent his work day working for one of the Sanitary Board's employees at the employee's personal business

Federal Grand Jury subpoenas were issued for bank records and other documents from numerous persons and companies, and a detailed review of those records was conducted by CSI investigators. Sanitary Board employees and other persons associated with Sanitary Board operations and who potentially had information regarding these schemes were interviewed by CSI investigators. Several persons appeared before a Federal Grand Jury and testimony was taken in regard to many of the suspected schemes and suspect invoices. Following two years of intense investigation, the United States Attorney declined prosecution due to statute of limitation restrictions and the lack of Federal funding to the Bluefield Sanitary Board during the limited time frame applying to specific statutory violations. As there were numerous violations of state law discovered during the investigation, the United States Attorney petitioned the Federal Court to allow the release of information gained through the Federal Grand Jury to the Prosecuting Attorney of Mercer County, West Virginia, for possible prosecution.

CSI Investigators briefed Mercer County Prosecuting Attorney Timothy Boggess regarding the investigation and provided to the Prosecutor relevant documents and Grand Jury records. In March 2010, CSI investigators presented to the Mercer County

Grand Jury information regarding several of the schemes and the following indictments were returned:

- Robert Terry Honaker – former Executive Director of the Bluefield Sanitary Board, six (6) counts of conducting Fraudulent Schemes, one (1) count of Obtaining Money by False Pretense.
- Kirk A. Simpkins – two (2) counts of Obtaining Money by False Pretense.
- Steven R. Burkhart Sr. – Line Crew Supervisor for the Bluefield Sanitary Board, four (4) counts of conducting Fraudulent Schemes and six (6) counts of Falsifying Accounts.
- Joseph Anthony Nunn – one (1) count of Conducting a Fraudulent Schemes
- Dewayne Houk Sr. – Maintenance Supervisor for the Bluefield Sanitary Board, one (1) count of Embezzlement.

As the “off balance sheet” bank account was operated in the State of Virginia, the information regarding that scheme was provided to Dennis Lee, Commonwealth Attorney for Tazewell County, Virginia, for further investigation by the Virginia State Police.

Immediately prior to the initiation of CSI's investigation into this matter, Robert Terry Honaker was terminated as Executive Director of the Bluefield Sanitary Board. During the investigation and prior to the indictments, Steven Burkhart Sr. was terminated from his position as the Board's Line Crew Supervisor. Brandon Sherwood, former Manager of the Sanitary Board's West Side Treatment Plant, was also terminated from his position as Field Engineer for the Bluefield Sanitary Board prior to the Grand Jury presentation. Following the indictments, Dewayne Houk Sr. was terminated as the Board's Maintenance Crew Supervisor.

The indictments of this case resulted in the following disposition of the individual cases:

Dewayne Houk pled guilty to one count of fraudulent schemes and received five years probation and ordered to pay \$6,300 in restitution.

Joseph Anthony Nunn pled guilty to one count of fraudulent schemes. Nunn received a three year suspended sentence and ordered to pay \$6,350 in restitution.

Stephen R Burkhart, Sr. pled guilty to one count of fraudulent schemes and received a sentence of 1 – 10 years, which was suspended. He was given one year of home confinement and ordered to pay \$12,700 in restitution.

Robert Terry Honaker stood trial and was convicted on four counts of fraudulent schemes. Honaker was ordered to serve 1 – 10 years in prison and when released, he is to serve five years probation. Honaker was also ordered to pay \$15,895.98 in restitution.

Burkhart and Honaker have been disqualified from receiving their pensions from the Consolidated Public Retirement Board for less than honorable service.

All charges were dismissed against Kirk Simpkins.

# **NEWS ITEMS**

## News Item

Dept., Board, or Commission:

File #:

Newspaper

Date

Martinsburg Journal

Thursday, December 02, 2010

### Martinsburg woman pleads guilty to perjury

December 1, 2010

MARTINSBURG - A 52-year-old Martinsburg woman entered a guilty plea to perjury Monday in United States District Court in Martinsburg before Magistrate Judge David J. Joel, in connection with false testimony she provided to a federal grand jury on Dec. 5, 2006.

A new release issued Wednesday by U.S. Attorney William J. Ihlenfeld II announced that Nancy P. Burkhart gave perjured testimony in 2006 in regard to fraudulent billing activities of the law firm where the defendant worked as office manager.

Burkhart worked for disbarred Martinsburg attorney Heidi Janelle Silver Myers, who pleaded guilty in April to two counts of a 112-count indictment charging her with aiding and abetting mail and wire fraud.

Myers previously was sentenced in 2008 to four months in prison and four months of home detention after being convicted of criminal contempt following a two-day bench trial in federal court for failing to answer two subpoenas requiring her to appear before a federal grand jury in Wheeling in December 2006.

Evidence in Burkhart's case was being sought by the U.S. Postal Inspection Service and the West Virginia Commission on Special Investigations.

Members of the law office were engaged in an illegal scheme to defraud the public defender's services for West Virginia out of hundreds of thousands of dollars meant for the payment of attorney fees for residents who could not otherwise afford to retain legal counsel.

Burkhart falsely testified that she had no knowledge regarding the firm's missing computer server. An investigation later revealed that a lawyer in the office removed the server, and Burkhart assisted in removing the server and planning to destroy it. The missing server contained information that demonstrated the manner in which the fraudulent bills were prepared. The evidence showed that Burkhart knew of the scheme and that she profited financially from it.

Burkhart is currently free on bond pending sentencing. The case was prosecuted by assistant U.S. attorneys Paul T. Camilletti and Thomas O. Mucklow and was investigated by the U.S. Postal Inspection Service and the West Virginia Commission on Special Investigations.

- From staff reports



## Former defense attorney sentenced in fraud case

January 26, 2011 - By Edward Marshall, Journal Staff Writer

MARTINSBURG - A former Martinsburg defense attorney who pleaded guilty in April to two counts of a federal indictment charging her with aiding and abetting mail and wire fraud was given leniency Tuesday during her sentencing.

Heidi Janelle Silver, who formerly went by the name Heidi Janelle Silver Myers, wept after Federal Judge Preston Bailey decided to sentence her to probation instead of more than two years in federal prison.

Silver was named in a federal indictment in June 2007 charging her with more than 100 criminal counts after she was accused of hatching a scheme that defrauded West Virginia Public Defender Services and a Birmingham, Ala.-based finance company for attorneys out of more than \$290,000.

The scheme involved overbilling the state for court-appointed attorney work which Silver's law firm never completed, as well as fraudulent claims for reimbursement for the services made with the Daniels Capital Corp. in Alabama.

Silver, who now lives in Virginia, pleaded guilty April 1 to two counts of the indictment as part of a plea agreement reached with the government. She was sentenced Tuesday by Bailey to five years of probation on each count, which will be served concurrently, and ordered to pay a total of \$292,000 in restitution.

"I was fully prepared to place Miss Silver in prison," Bailey said after rendering his sentence.

However, he said he decided to grant the government's motion for leniency given the substantial amount of help Silver gave federal prosecutors in the prosecution of a co-defendant in the case, as well as because they were non-violent offenses. Bailey also noted that Silver already lost her law license, her profession and reputation, in addition to currently undergoing treatment for a mental illness.

Under federal sentencing guidelines, Silver had faced a prison term of up to three years and five months without the possibility of probation, as well as a fine of up to \$60,000.

However, Assistant U.S. Attorney Paul T. Camilletti, who prosecuted the case, filed an oral motion with the court at Tuesday's sentencing hearing asking the court to lower Silver's offense level by 14 levels. In federal court, the higher the offense level, the more harsh a sentence. Camilletti's recommendation was surprising, given Silver's previous reluctance to cooperate with the federal prosecutors and the court prior to her decision in April to accept a plea agreement.

Silver previously was convicted of criminal contempt for her failure to answer two subpoenas requiring her to appear before a federal grand jury in Wheeling in December 2006. The subpoenas required her to produce items and files found missing from her law office during the investigation of

her practice. Last April, the government sought to have Silver be held in contempt again after she said she could not fully comply with the court's previous orders commanding her to produce the files, a tower server and a backup hard drive.

"I realize the irony in making this motion," Camilletti said Tuesday. "That being said, the defendant has provided significant assistance to the U.S."

Silver's complete change in attitude came after she accepted April's plea agreement, Camilletti said.

As part of the terms of her plea agreement, Silver was to assist the government in preparing for the trial of Silver's former law office manager, 52-year-old Nancy P. Burkhart, of Martinsburg. Burkhart pleaded guilty to perjury in December in connection with false testimony she provided to a federal grand jury on Dec. 5, 2006. Silver was able to provide government prosecutors evidence that showed that Burkhart knew of the fraudulent schemes Silver's firm was involved in and that Burkhart helped to remove evidence from the law office, according to court information.

Silver's attorney, Andrew Arnold, said he was pleased with the judge's decision.

"I have seen the changes that have come with her over the years and it has been a pleasure to advocate for her," Arnold said.

Silver, herself, thanked the court and apologized to Bailey for her previous lack of cooperation.

"I was very rude to you and pretentious," she said.

- Staff writer Edward Marshall can be reached at 304-263-8931, ext. 182, or [emarshall@journal-news.net](mailto:emarshall@journal-news.net)

July 10, 2010

## **Computer exec found guilty in Parkersburg broadband fraud**

By Andrew Clevenger, Staff writer  
*The Charleston Gazette*

CHARLESTON, W.Va. -- A federal jury convicted an Ohio computer executive Friday on charges that he deliberately misled investigators about his knowledge of a scheme to misuse public funds intended to bring broadband Internet access to the Parkersburg area.

In September, James Larry Hymer, 41, was indicted on charges of misleading a government auditor checking up on a \$3.295 million loan issued to Sequelle Communications Alliance Inc. by the U.S. Department of Agriculture in 2002. He also faced obstruction charges for lying to investigators during an interview in March 2007, police say.

The jury deliberated for six hours before finding him guilty on both counts.

The Sequelle project, designed to bring broadband Internet access to rural counties in West Virginia and southern Ohio, fell apart before completion.

Heidi Laughery, the project's CEO; Alan Michael McPeck, its chairman of the board; and subcontractor Scott Truslow have pleaded guilty to charges related to the misappropriation of more than \$2.4 million, mostly to form a new company designed to market Sequelle's "Internet in a box" concept nationally.

Hymer served as chief financial officer for MentorGen, a Columbus-based software company that was a principal subcontractor to Sequelle. MentorGen also pleaded guilty to money laundering, and the company has agreed to pay \$1.5 million in restitution and fines.

According to Assistant U.S. Attorneys Anna Forbes and Larry Ellis, Hymer intentionally mislabeled payments, including \$143,000 that MentorGen spent buying stock in the new joint venture, on a spreadsheet provided as part of a federal audit in 2005. Instead of reflecting the stock purchase, it was labeled as consulting fees, which raised a red flag with auditors, who wondered why a subcontractor was paying its client.

"What they were supposed to do was bring the Internet to rural areas," Ellis said. "They thought they were going to get rich."

Investigators gave Hymer a chance to come clean about his role in the scheme, but Forbes said he lied during the March 2007 interview.

The jury heard testimony about invoices totaling \$200,000 -- the maximum amount allocated for training under the terms of the federal loan -- submitted by MentorGen, although a former employee testified that she only remembered training one Sequelle employee for six hours.

The defense tried to portray the \$200,000 as the amount fixed for training by the contract. MentorGen's training costs could have exceeded that amount, which would have cost them money, or they could have undercut that amount, which would have resulted in a profit.

"You don't get paid under a government contract if you don't do the work. It's that simple," Forbes told the jury. "It's not profit, it's fraud."

In founding the joint venture between Sequelle and MentorGen, those involved in the scheme, seeing a big pile of government funds, tried to commit a money grab, she said.

"That not what the government signed up for. That's not what taxpayer money should be used for," Forbes said.

Defense attorney Michael Del Guidice maintained that the government's charges against James Larry Hymer were unfair and petty.

"It's absolutely frivolous to come in here five years later and criticize a spreadsheet," Del Guidice said in his closing argument.

Moreover, he said, the agents didn't record the March 2007 interview and were forced to rely on their notes, meaning no one could be sure about what Hymer said.

Hymer acknowledged in the interview that he knew money was being illegally diverted, but said he only learned that after the fact, he said. But the government had charged him with denying that he had any knowledge of the money-laundering scheme.

"It's their notes against the world. And that's unfair," Del Guidice said.

Laughery was sentenced to 18 months in prison and ordered to pay almost \$850,000 in restitution. Truslow received a sentence of six months of home confinement and restitution of almost \$550,000.

McPeek, a longtime administrator at Mountain State College, pleaded guilty to obstruction charges last week. He faces up to five years in prison when sentenced by U.S. District Judge Thomas E. Johnston on Oct. 19.

Johnston will sentence Hymer at a later date.

February 28, 2011

Ex-delegate's former employee admits fraud setup

By Andrew Clevenger

CHARLESTON, W.Va. -- A former employee of ex-Delegate Joseph C. Ferrell's gambling company admitted in federal court Monday that he helped arrange for another employee to be paid under the table so he could continue receiving Social Security benefits.

Mark Anthony Cantrell, 34, of Alum Creek, pleaded guilty to aiding and abetting Social Security fraud. He said that, in the spring of 2006, he acted as a go-between between Southern Amusement Inc. owner Ferrell and Ronald W. Price, who would agree to come back to work for the company only if it paid him in cash.

Cantrell said Ferrell agreed to Price's terms, and Price went to work as a route driver for Southern Amusement, a company that provided video lottery machines to bars and other venues.

Ferrell, a Logan County Democrat, pleaded guilty to racketeering and tax fraud charges in October 2010, admitting that he ran an illegal interstate-gambling ring.

In exchange for his guilty plea, Assistant U.S. Attorneys Hunter Smith and Larry Ellis agreed to drop all other charges against Cantrell, including lying to federal investigators about removing money from video machines and racketeering charges.

U.S. District Judge John T. Copenhaver Jr. initially balked at Cantrell's proposed plea agreement, because Cantrell's actions all took place before Price actually defrauded the

Social Security Administration. Also, under the information presented by the prosecutors, Cantrell did not do anything to conceal the payments, the judge said.

Smith and Ellis said they were charging Cantrell for his role in causing the fraud to take place, not his active participation in the ongoing deceit.

After consulting with his court-appointed attorney, Mark French, Cantrell agreed to this interpretation of his crime.

Copenhaver scheduled Cantrell's sentencing for June 1. He faces up to five years in prison, and agreed to pay more than \$40,000 in restitution.

According to court records, Price, of Oceana, pleaded guilty in 2008 to Social Security fraud and was sentenced on Jan. 30, 2009, to one year and one day in prison.

However, prosecutors kept asking to postpone the date Price was to report to prison, indicated that they expected him to be a witness against Ferrell.

In January of this year, Copenhaver put Price's prison term on hold indefinitely.

Price agreed to pay \$151,288 in restitution for benefits he wrongly received between 1996 and June 2008. It is not clear from the court records when, during that period, Price worked for Southern Amusement.

Price has been making monthly restitution payments of \$400 since February 2009. At that rate, it will take him more than 30 years to pay the full amount.

Last week, former state Lottery Commission inspector Carolyn Kitchen was sentenced to five years probation for accepting money and gifts from Ferrell in exchange for providing access to the sealed part of video lottery machines after hours and on weekends.

Earlier this month, Copenhaver rescheduled Ferrell's sentencing for May 2, after a federal probation officer asked for more time to review extensive documents related to Ferrell's medical and financial situation. Ferrell faces up to 25 years in prison.

Ferrell, who also pleaded guilty to tax evasion, agreed to pay \$75,000 in restitution to the Internal Revenue Service, and to forfeit \$527,540 in proceeds from the gambling ring as part of his plea deal. He also agreed to divest himself from Southern Amusement, and to seek no more licenses or permits from the state Lottery Commission.

Vicki L. Ferrell is listed as Southern Amusement's president.

Joseph Ferrell became a major video machine owner in 1995, when he bought Southern Amusement from the family of state Senate President Earl Ray Tomblin.

*Reach Andrew Clevenger at [acleven...@wvgazette.com](mailto:acleven...@wvgazette.com) or 304-348-1723.*

JOE C. FERRELL

## Ex-delegate gets two years for racketeering, tax fraud

By Zac Taylor

Staff writer

A former member of the state House of Delegates was sentenced to two years in federal prison on Wednesday for operating an illegal gambling ring in parts of Southern West Virginia and Kentucky.

U.S. District Judge John C. Copenhaver sentenced Joe C. Ferrell, 63, on federal counts of racketeering and tax fraud. As part of the sentence, Ferrell was ordered to pay a \$250,000 fine and another \$600,000 in forfeitures.

Ferrell, who served as a Logan County delegate for 14 years, admitted last year to operating illegal video poker machines through two of his companies, White Amusement and Southern Amusement Co. He purchased Southern Amusement Co. in 1995 from the family of Sen. Earl Ray Tomblin.

Ferrell also admitted bribing a former state Lottery inspector to write favorable reports, and to give him and his employees access to restricted parts of the gambling machines.

In 2009, a federal grand jury indicted the former delegate on 38 counts of tax evasion, rack-

eteering, and other crimes related to the illegal gambling enterprise. Prosecutors agreed to drop all but two of those counts in exchange for his plea.

"For his crimes, Mr. Ferrell was rightfully sentenced to years in prison," U.S. District Attorney Booth Goodwin said. "This closes a long, sad chapter in Logan County's history in which Mr. Ferrell was a central player. This conviction should send a clear message that no one is above the law."

Wednesday's sentencing hearing lasted about seven hours, as defense lawyers and federal prosecutors hammered out financial details and argued over Ferrell's physical ability to serve a federal prison sentence.

Ferrell's lawyers asked the judge to consider allowing the former delegate to serve his sentence on home confinement. A doctor testified earlier in the day that Ferrell has diabetes and heart problems, and suffers from severe foot and leg ailments that will require surgery.

"What makes this case different, in my experience, is the medical issues," said defense

lawyer Ben Bailey. "He can't receive medical care in the most effective manner if he's incarcerated."

Assistant U.S. District Attorney Hunter Smith argued that Ferrell will be able to get adequate care in the federal prison system, and noted that his health problems are "not uncommon" in prison hospitals.

Copenhaver noted Ferrell's apparent medical issues — allowing Ferrell to stay seated as he handed down the sentence — but ultimately sided with the prosecutors.

"The court agrees with the government in view of the fact that the Bureau of Prisons can provide necessary care for you," the judge said.

Ferrell addressed the court just before Copenhaver handed down his sentence. He apologized briefly to his friends and family.

"I'm just ready to take my sentence and go on about it," he said.

Copenhaver gave Ferrell 60 days to undergo another medical evaluation before he reports to prison.

Reach Zac Taylor  
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## Former lottery inspector gets probation in Ferrell case

By Andrew Clevenger

Staff writer

A former West Virginia Lottery **inspector** who admitted she accepted bribes from a former state delegate who ran an illegal multi-state gambling ring was sentenced to five years probation in federal court Wednesday. Carolyn Ann Kitchen, 55, of Chapmanville, admitted in November that she lied to investigators with the FBI and IRS in February 2008 when they asked her about accepting gratuities from longtime delegate Joseph C. Ferrell.

Ferrell — a Logan County Democrat who owned Southern Amusements Inc., a company that provided video lottery machines to bars and other venues — pleaded guilty to racketeering and tax fraud charges in October 2010. Kitchen wept as she asked the court for forgiveness, saying she was truly sorry for accepting money and other gifts from Ferrell in exchange for being available after hours and on weekends to open the sealed parts of the machines if they needed repairs. "Over the last 21/

2 years, this has really taken a toll on me and my family," she told U.S. District Judge John T. Copenhaver Jr.

Her court-appointed lawyer, Nick Preservati, said he didn't believe Kitchen belonged in prison. "As a result of [her crime], she not only lost her job at the Lottery Commission, she found out last week that she lost her government pension," he said. "She's lost friends, she's lost her dignity. . . At this point, she's about at rock bottom."

Kitchen has had to turn to her 80-year-old mother to help with her car payments, he said.

Assistant U.S. Attorney Larry Ellis said that federal prosecutors had struggled to nail down the corruption element of the case against Ferrell until Kitchen told them about the bribes. "Carolyn Kitchen's cooperation against Mr. Ferrell was emotionally wrenching and difficult for her," he said, because of her personal friendship with him and her fear of the power he reputedly had in their community.

Copenhaver said that there were not many crimes that are more serious than those involving public corruption. He also said that he considered her personal characteristics and lack of a criminal background in sentencing her to probation.

He also fined Kitchen \$1,000. "This conduct, although engaged in on more than one occasion, has nevertheless cost you dearly," the judge said.

After the hearing, Kitchen turned and hugged her mother, who was also crying, in the gallery.

Earlier this month, Copenhaver rescheduled Ferrell's sentencing for May 2 after a U.S. Probation officer asked for more time to review extensive documents related to Ferrell's medical and financial situation. Ferrell faces up to 25 years in prison.

He also granted prosecutors' request and scheduled a plea hearing for former Southern Amusement employee Mark Anthony Cantrell for Feb. 28. Cantrell had initially been charged with lying to federal investigators about removing money from video machines, but now faces racketeering

and gambling charges, as well as charges that he helped Ferrell pay another employee in cash so that he could work and continue to collect Social Security benefits.

Ferrell became a major video machine owner in 1995, when he bought Southern Amusement Co. from the family of Earl Ray Tomblin, then a state senator and now Senate president and a candidate for governor.

As part of Ferrell's plea deal, federal prosecutors dropped charges that he bought votes and bribed Logan's

mayor and the county's sheriff-elect, both of whom have been convicted of election-related charges.

Ferrell also agreed to pay \$75,000 in restitution to the Internal Revenue Service, and to forfeit \$527,540 in proceeds from the gambling ring. He also agreed to divest himself from Southern Amusement, and to seek no more licenses or permits from the state Lottery Commission.

The president of Southern Amusement is listed as Vicki L. Ferrell on the Secretary of State's website. Joe C. Ferrell's wife is named Vicki. Vicki Ferrell became majority shareholder in 2004 and sole shareholder in 2007, according to filings with the Secretary of State's office.

In June 2005, federal investigators raided Southern Amusement Co.'s Logan headquarters, seizing records related to both gambling and election fraud.

In January 2006, after he was linked to a federal vote-buying probe that resulted in convictions of multiple elected officials in Southern West Virginia, Ferrell announced through his attorney that he would not seek re-election. Ferrell, who pleaded guilty in state court in 1992 to illegally funneling \$58,000 in cash to campaigns in Logan, Boone and Lincoln counties, served a total of seven terms in the Legislature.

Reach Andrew Clevenger at [aclevenger@wvgazette.com](mailto:aclevenger@wvgazette.com) or 304-348-1723.



December 10, 2010

## **Bluefield Sanitary Board case** **(<http://bdtonline.com/local/x1853593054/Bluefield-Sanitary-Board-case>)**

### **Local man enters guilty plea**

**GREG JORDAN**

**Bluefield Daily Telegraph (<http://bdtonline.com>)**

PRINCETON — A Bluefield man entered a guilty plea Thursday as part of a best interest plea agreement in an embezzlement case that was part of an investigation into the Bluefield Sanitary Board.

Dewayne Houk, 53, appeared in Mercer County Circuit Court before Judge William Sadler for a plea hearing. Houk had been indicted by the Mercer County Grand Jury on a charge of embezzlement, which carries an indeterminate sentence of 1 to 10 years. People convicted of that charge face no less than a year in prison, but no more than 10.

Houk's attorney, David B. Kelley, said before the hearing that his client was entering into a best interests plea. Defendants make best interest pleas because they believe a jury could convict them if their cases go to trial.

Kelley said that Houk had been indicted on only one count, embezzlement, and that the incident connected with it was not directly connected to the rest of the Bluefield Sanitary Board case. The indictment stated that Houk, who was an employee of the board, used supplies, equipment and personnel from the board to help his private company, Mercer Sewage, install 1,400 feet of sewer line for a private residence in Bluefield, Va.

Sadler gave Houk 5 years probation. Conditions of the probation include testifying in the cases of the other Bluefield Sanitary Board defendants and paying \$6,300 of restitution to the sanitary board. Sadler said if restitution was paid before the 5 years were completed, he would consider reducing the length of Houk's probation.

Assistant Prosecuting Attorney Scott Ash said after the hearing Houk's guilty plea could be withdrawn if he successfully completes his probation.

Ash said the state has elected to try another defendant, Joseph Anthony Nunn, 32, of Bluefield, who was charged with fraudulent scheme, on Jan. 4, 2011.

The cases of Steven Burkhart Sr., 52, of Bluefield, charged with fraudulent scheme, falsifying accounts; Kirk Anthony Simpkins, 40, of Bramwell, obtaining money by false pretenses; and Robert Terry Honaker, 58, of Wytheville, Va., fraudulent scheme, obtaining money by false pretenses, will likely be set for trial Jan. 4, 2011 for early January and February, Ash said.

## News Item

Dept., Board, or Commission: Bluefield Sanitary Board

File #: \_\_\_\_\_

Newspaper: WVVA.com

Date: Tuesday, January 04, 2011

### **Former Sanitary Board worker pleads guilty**

*Posted: Jan 04, 2011 3:19 PM EST*

BLUEFIELD (WVVA) - Another former Bluefield Sanitary Board worker has entered into a plea agreement for his role in scamming nearly \$500,000 from the agency.

Joseph Nunn was scheduled for a trial Tuesday in Mercer County, but he decided to enter a plea during jury selection.

Nunn pleaded guilty to one count of conducting a fraudulent scheme. His sentencing will take place in mid-March.

Last month, Dewayne Houk was sentenced to five years probation for embezzlement.

Trial dates for the others charged in the case, Terry Honaker, Steven Burkhart and Kirk Simpkins, have not been set.

## News Item

Dept., Board, or Commission: Bluefield Sanitary Board  
File #: \_\_\_\_\_  
Newspaper: Bluefield Daily Telegraph  
Date: Wednesday, January 05, 2011

### **Sanitary Board case: Defendant enters guilty plea**

**GREG JORDAN**

**Bluefield Daily Telegraph (<http://bdtonline.com>)**

PRINCETON — A jury pool for Mercer County Circuit Court was dismissed Tuesday morning when a defendant scheduled to stand trial for defrauding the Bluefield Sanitary Board decided to change his plea to guilty.

Joseph Anthony Nunn, 32, of Bluefield was to be tried in Mercer County Circuit Court on a charge of fraudulent scheme. However, after being told that Nunn planned to plead guilty to the charge, Judge William Sadler sent the potential jurors home for the day.

Nunn is among four men who were indicted on various charges after an investigation of finances at the Bluefield Sanitary Board. Prosecuting Attorney Scott Ash, who was sworn in Monday, said that the decision was unusual because Nunn was not entering into a plea agreement with any conditions. Instead, he pleaded guilty to the one charge.

Sentencing was scheduled for March 14, Ash said later. Nunn is facing an indeterminate sentence ranging from one to 10 years in prison and a fine of up to \$2,500.

## News Item

Dept., Board, or Commission: Bluefield Sanitary Board  
File #: \_\_\_\_\_  
Newspaper: Bluefield Daily Telegraph  
Date: Wednesday, January 05, 2011

### **Sanitary Board case: Defendant enters guilty plea**

**GREG JORDAN**

**Bluefield Daily Telegraph (<http://bdtonline.com>)**

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Sentencing was scheduled for March 14, Ash said later. Nunn is facing an indeterminate sentence ranging from one to 10 years in prison and a fine of up to \$2,500.

In a separate hearing, a trial date of March 8 was set for Steven Burkhart Sr., 52, of Bluefield, who has been charged with fraudulent scheme and falsifying accounts.

A trial date was also set March 29 for Robert Terry Honaker, 58, of Wytheville, Va. Honaker has been charged with fraudulent scheme and obtaining money by false pretenses.

Another person charged in the case, Dewayne Houk, 53, of Bluefield, entered a best interests plea Dec. 9, 2010, to a charge of embezzlement. The indictment stated that Houk used equipment, supplies and personnel from the sanitary board to help his private company install 1,400 feet of sewer line to a Bluefield, Va. home.

Judge Sadler gave Houk five years probation, and conditions included testifying in other Bluefield Sanitary Board cases and paying the sanitary board \$6,300 of restitution. Ash said at that time that Houk's guilty plea could be withdrawn if he successfully completes probation.

## News Item

Dept., Board, or Commission: Bluefield Sanitary Board

File #:

Newspaper: wvva.com

Date: Tuesday, March 15, 2011

### **Former Sanitary Board worker gets probation**

*Posted: Mar 15, 2011 8:37 AM EDT*

PRINCETON (WVVA) - Another former Bluefield Sanitary Board worker gets probation for his role in scamming a half-million dollars from the agency.

Joseph Nunn received a three year suspended sentence for his conviction on conducting a fraudulent scheme.

Nunn is one of five former Sanitary Board employees who were charged last year with misusing agency funds.

The alleged scams began in 1996, and prosecutors say they lasted for over ten years.

So far, three of the men charged in the case have taken a plea deal.

**Trial begins for former  
Bluefield Sanitary  
Board chief**



Former Bluefield  
Sanitary Board  
Executive Director  
Robert Terry Honaker.  
Staff photo by Jon Bolt

**(<http://bdtonline.com/local/x652258240/Trial-begins-for-former-Bluefield-Sanitary-Board-chief>)**

**GREG JORDAN**  
**Bluefield Daily Telegraph (<http://bdtonline.com>)**

PRINCETON — By

Bluefield Daily Telegraph

— Opening arguments were heard Tuesday for the trial of a former Bluefield Sanitary Board executive director facing charges of fraudulent scheme and obtaining money by false pretense.

Robert Terry Honaker, 59, of Wytheville, Va., was indicted in February 2010 by the Mercer County Grand Jury after an investigation by several law enforcement agencies into alleged wrongdoing. Honaker's position on the sanitary board was terminated in January 2007.

Honaker has worked for the Bluefield Sanitary Board, an entity handling sewage and wastewater treatment for Bluefield and Bluefield, Va., in one capacity or another since 1975, Prosecuting Attorney Scott Ash said. The alleged charges occurred between 2001 and 2007.

"The evidence shows that there was a pretty good system in place for keeping track of expenditures to thwart or discourage thievery," he said. "There was a major flaw. It assumed there was a chief operating officer who was honest and not self-dealing."

Ash said the evidence would show that Honaker had been self-serving in several different ways. One alleged fraud involved using sanitary board funds to pay for shipping horse semen to horse breeders. Honaker kept a stud horse and was paid by breeders.



Approximately \$1,688 was spent this way, Ash said.

Another count in Honaker's indictment alleges that he used board funds and employees to service his F-350 pick-up truck, Ash said.

In another instance, board funds paid for a heat pump at Honaker's home; \$1,500 for paid for the external part of the unit.

Ash then described the purchase of hay and straw, commodities he said could have been used at Honaker's stable and property. Between July 2001 and January 2007, approximately 5,559 bales were purchased with board funds. However, in the more than three years since Honaker's departure, only 447 bales have been purchased, he said.

"We're going to establish beyond a reasonable doubt that these crimes occurred," Ash said. "It's not sexy, not TV stuff. It's not CSI. It was done with plain old police work, searching records and visiting businesses."

Attorney Keith Flinchum, who is representing Honaker with attorney William Flanigan, said Honaker did a lot for the sanitary board while he was its executive director. He helped raise more than \$30 million in grants and other funding; at times, the board had a \$4 million budget.

The prosecution alleges that about \$32,000 was taken during fraud that goes back to 2001. Investigators "went through 10 years of banker boxes trying to come up with this figure," Flinchum said.

The stud horse in the case belongs to Honaker's son, not Honaker himself, Flinchum said. Shipments were made from the sanitary board offices because someone could be there when a courier came to collect the special shipping containers used for horse semen; the expensive containers were sent back there, too.

Sometimes the wrong account number was used during the transactions, Flinchum said.

"It was simply a mistake. He (Honaker) did not gain from this," he said.

In the case of Honaker's truck being fixed by board employees and paid for with board money, Flinchum said his client's truck was used for board business and sometimes driven by board employees. When the truck had damages inflicted while Honaker was on his own time, he used an outside garage.

"This was legitimate. Nothing was hidden," Flinchum said.

In the case of the heat pump, Honaker used an employee discount the board has with a local supplier, and he paid for the unit, Flinchum said.

Hay and straw purchased while Honaker served on the sanitary board was a grade suitable for composting, but not for feeding horses, Flinchum said. The hay was used to line trucks carrying sludge to farms and to keep the sludge in place when it was poured.

The trial continues today in Mercer County Circuit Court before Judge William Sadler.

Due to the case's complexity, jurors were allowed to take notes; however, Sadler gave them guidelines to follow before opening arguments were heard. First, the jurors were told that they were not required to take notes. They were to rely on their memories instead of the

notes if there were any discrepancies. Jurors were also instructed not to share their notes with each other. Any notes the jurors make will be shredded without anyone seeing them when the trial and jury deliberations are over, Sadler said.

## **Details emerge in trial of former Bluefield Sanitary Board chief**

**(<http://bdtonline.com/local/x66805349/Details-emerge-in-trial-of-former-Bluefield-Sanitary-Board-chief>)**

**GREG JORDAN**

**Bluefield Daily Telegraph (<http://bdtonline.com>)**

PRINCETON — Descriptions of different hay grades and the procedure used for shipping horse semen were part of the testimony Tuesday during the trial of a former sanitary board employee.

The Mercer County Circuit Court jury heard from several witnesses in the trial of Robert Terry Honaker, 59, of Wytheville, Va. Honaker, the former executive director of the Bluefield Sanitary Board, was indicted in 2010 on charges of fraudulent scheme and obtaining money by false pretenses.

An investigation covering board records from 2001 to 2007 allegedly revealed a pattern of fraud involving the board's property and funds. In his opening statement, Prosecuting Attorney Scott Ash told the jury that Honaker had used sanitary board funds to pay for shipping a stud horse's semen to horse breeders, paid for a heat pump and bales of hay with board funds, and other activities ranging from servicing his pick-up truck to purchasing a heat pump for his home.

Honaker's son, Robert Burt Honaker, 30, said the stud horse in question belonged to him. It is kept at a Kentucky horse farm, and its semen, sealed in special containers, was shipped to Bluefield for breeders who had purchased it. Containers were sent to the sanitary board because people could be there to accept them from the courier, he said.

Robert Burt Honaker also testified that horse semen was never shipped from Bluefield, only empty containers.

He said that the containers cost between \$300 and \$400 apiece. Breeders who paid \$1,500 for his horse's semen were charged an extra \$350 to cover shipping; this fee included returning the empty container.

Shipping records showed that the sanitary board's account was sometimes used to pay for the shipping. Honaker said that the board's number had been used by mistake.

Ash stated in his opening remarks that 5,559 bales of hay were purchased between July 2001 and January 2007, but only 447 bales were purchased after Honaker left the sanitary board. Robert Burt Honaker said when asked about hay grades that the hay used by the sanitary board was not a type suitable for feeding horses; instead, it is used for composting.

In a deposition recorded on a DVD played to the jury, Wayne Green of Citizens Building Supply testified that Honaker approved sanitary board purchases at the end of each month. When cross-examined by Ash, Green said that purchases were picked up with the sanitary board's trucks, so he did not know what happened to the materials.

Green said that when Honaker bought items for himself, he paid either with cash or a personal check.

Judge William Sadler told the jury that deliberations could begin today.

## **Jury finds former Bluefield Sanitary Board chief guilty**



Former Bluefield  
Sanitary Board  
Executive Director  
Robert Terry Honaker.  
Staff photo by Jon Bolt

**(<http://bdtonline.com/local/x1227513656/Jury-finds-former-Bluefield-Sanitary-Board-chief-guilty>)**

**GREG JORDAN**

**Bluefield Daily Telegraph (<http://bdtonline.com>)**

PRINCETON — By

Bluefield Daily Telegraph

— A Mercer County Circuit Court jury found a former executive director of the Bluefield Sanitary Board guilty Thursday of fraudulent schemes.

Robert Terry Honaker, 69, of Wytheville, Va. was found guilty of four counts of fraudulent scheme, said Prosecuting Attorney Scott Ash. The jury also determined that Honaker was not guilty of two other charges.

Each of the four guilty verdicts carries an indeterminate term of 1 to 10 years imprisonment, Ash said. Sentencing has been scheduled for Sept. 16 before Judge William Sadler. Honaker remains free on bond.

Honaker had been charged with fraudulent scheme and obtaining money by false pretenses. His position as executive director of the Bluefield Sanitary Board was terminated in 2007.

The trial started Tuesday with opening remarks from Prosecuting Attorney Scott Ash and attorney Keith Flinchum, who represented Honaker with attorney William Flanigan.

The charges occurred between 2001 and 2007. During his opening statement, Ash said that Honaker had used the sanitary board's funds and personnel for his own benefit. One count involved work done on Honaker's pick-up truck by sanitary board personnel. Others involved the shipping of semen from a

stud horse belonging to his son, purchases of hay, a heat pump installed at Honaker's home, and a trailer purchased for the sanitary board.

In their opening statement and cross examination of witnesses, Flinchum and Flanigan argued that the horse semen arrived at the sanitary board's offices because somebody could be there to accept the expensive container. The horse was kept at a Kentucky farm and its semen was shipped to breeders in the Bluefield area; only empty containers left Bluefield. The board's shipping number had been used, but this was a mistake.

The defense also countered that Honaker's pick-up truck was used by the sanitary board, and that he had paid for repairs resulting for activities that were not board business. Hay purchased by the sanitary board was a grade suitable for composting, but not for feeding horses; the hay was used for lining trucks delivering sludge to farms, his attorneys said.

Four other defendants who were indicted with Honaker later entered into plea agreements. Honaker's case was the only one to go to trial.

Honaker declined to make any statements Friday evening until he had spoken with his attorneys.

# **POWERS & DUTIES**

# The West Virginia Code

## ARTICLE 5.

### COMMISSION ON SPECIAL INVESTIGATIONS

Sec.		Sec.	
4-5-1	Commission continued as "commission on special investigations"; composition; appointment and terms of members.	4-5-4	Compensation and expenses of members; other expenses; how paid; joint committee approval.
4-5-2	Powers and duties generally.	4-5-5	Investigations exempt from public disclosure requirements.
4-5-3	Executive sessions; hearings; subpoena power; enforcement provisions.	4-5-6	False statements to commission.

#### **§ 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. (1971,c.87;1980,c.78;1989,c.113.)

#### **§ 4-5-2. Powers and duties generally.**

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.

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. (1971,c.87;1980,c.78)

#### **§ 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. (1971, c. 87.)

**§ 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. (1971, c. 87.)

**§ 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. (1986, c 98.)

**§ 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.

# **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.