
**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
Tim Miley
Co-Chairman**

**Thirty-third Annual Report
to the
West Virginia Legislature
June 30, 2013**



WEST VIRGINIA LEGISLATURE
Commission on Special Investigations

CHARLESTON, WEST VIRGINIA 25311-1061

301 Eagle Mountain Road
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January 8, 2014


West Virginia Legislature
Charleston, West Virginia

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

Respectfully submitted,



Jeffrey Kessler, Co-Chairman
Commission on Special Investigations



Tim Miley, Co-Chairman
Commission on Special Investigations

JK:TM:lmw

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Pursuant to Chapter 4, Article 5, Section 2 of the West Virginia Code, the Commission on Special Investigations presents the Thirty-third Annual Report to the West Virginia Legislature. This Report covers the Commission's activities from July 1, 2012 through June 30, 2013.

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, 2013:

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

<u>House</u>	<u>Appointed to Commission</u>
Tim Miley - D (Co-Chairman)	2013
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, 2013:

<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, 2012 through June 30, 2013)

During the course of this fiscal year, the Commission on Special Investigations opened 16 investigative files and closed 13 investigations. The Commission met 10 times between July 1, 2012 and June 30, 2013. During these meetings the Commission staff apprised members of 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's Office, Lewisburg, West Virginia

A complaint was received by the Commission office that Chief Public Defender Denney Bostic of the Lewisburg office was embezzling funds by using a credit card issued to him for business related purchases through that office for personal purchases.

An investigation was initiated in September 2011. In October of that same year, Denney Bostic voluntarily surrendered his law license.

In June 2012, a Special Prosecutor was appointed.

In June 2013, Mr. Bostic was indicted and arraigned, pleading not guilty to an embezzlement charge.

Governor's Office of Economic & Community Development (Town of Pineville)

In December 2011, CSI received information of a possible embezzlement by the Town Recorder of Pineville, Brandee Phillips-Ellis. During this investigation it was discovered that prior to being employed by the Town of Pineville, Ellis was employed by S.H.E.D. (Safe Housing & Economic Development Fund) in McDowell County. After being elected Town Recorder in Pineville she was hired as Town Manager and maintained her part-time employment with S.H.E.D as well.

During the investigation, it was discovered Ellis had not only embezzled funds from the Town of Pineville through a grant the Town had received from the Department of Highways for paving streets in the Town, but had also taken monies from the Coal Severance Account, Water Deposit Account and Water Reserve Account.

Ellis used the monies she embezzled to make payment on her husband's credit card in the amount of \$14,649.83, purchase a vehicle for \$9,500, and she wrote herself additional payroll checks each month for approximately 10 months.

The monies Ellis was embezzling from the Town of Pineville were causing the Town accounts to run very low and the Town was having trouble paying its bills. When Ellis realized this she created false invoices and made payments to a fictitious company from S.H.E.D. accounts. Ellis, in an effort to conceal her actions, then paid part of these monies as taxes from the fictitious company into the Town of Pineville accounts.

In March 2013, Brandee Phillips-Ellis plead guilty in US District Court in Beckley, West Virginia to one count of embezzlement of Federal funds of more than \$5,000.

In June 2013, Ellis was sentenced to 18 months in Federal prison followed by three years supervised probation. At the time of her sentencing, Ellis had paid her total restitution in the amount of \$80,489.96.

Public Defender Services

This past year investigators of this Commission have investigated three (3) separate attorneys for the same billing scheme that was used by three others in the past three years: billing Public Defender Services for working more than 24 hours in a single day.

As a result of these investigations, Public Defender Services created a computerized billing system and has already notified attorneys throughout the State that this system can be used, and some attorneys began utilizing this method.

The five investigations successfully investigated to date have discovered that over 1.5 million dollars have been falsely billed through the Public Defender Services' office. At the present time, we have three pending Public Defender Services investigations. The following cases were completed this year:

- 1.) Charles Mullins, an attorney from Pineville, West Virginia, plead guilty to income tax evasion in August 2012, a part of which he was ordered to pay \$223,605 to Public Defender Services for false billing. In January 2013 Mullins was sentenced to 18 months in Federal prison;
- 2.) Lisa Weese, an attorney from Belington, West Virginia, plead guilty to mail fraud in Federal Court in Elkins, West Virginia after a year-long investigation relating to false billings she made to Public Defender Services. Weese plead guilty and was sentenced to 12 months and one day in prison by US Federal

Judge John Bailey in May 2013. In June 2013, Judge Baily entered an order that Weese pay \$159,130.08 in restitution to Public Defender Services.

3.) In June 2012, CSI received information that Carl Dascoli, Jr. was possibly submitting false invoices to Public Defender Services for his work in Cabell County. In April 2013, Dascoli plead guilty to obtaining goods by false pretense. He was sentenced to three years' probation and ordered to pay restitution in the amount of \$10,000.

Shepherd University

In October 2012, information was given to the Commission on Special Investigations by the Purchasing Card Division of the State Auditor's Office that Elizabeth Shanton, an Administrator with Shepherd University, was making questionable purchases on her State issued Purchasing Card.

In April 2013, Shanton was indicted on one (1) count of fraudulent schemes and 53 counts of fraudulent use of a Purchasing Card.

Fairmont State University

In February 2013, the Commission began an investigation on improper Purchasing Card purchases at Fairmont State University based on information received from the Purchasing Card Division of the State Auditor's Office.

In April 2013, a Federal search warrant was executed with the FBI.

Federal forfeiture action was initiated in regard to the target's home valued at approximately \$500,000 in June 2013.

This investigation is ongoing at this time.

Department of Natural Resources

In April 2013, the Commission received information that David Smith, a Department of Natural Resources' employee, was making questionable purchases with his State issued Purchasing Card. This caused an investigation to be initiated.

After a short period of investigation, information was received that Smith was attempting to personally sell a State owned man lift.

In June 2013, Smith was arrested while attempting to sell the man lift to undercover officers from the West Virginia State Police, whose assistance was solicited by CSI Investigators.

This case is to be presented to a Kanawha County Grand Jury.

NEWS ITEMS

Former chief public defender pleads not guilty to embezzlement

By Tina Alvey Register-Herald Reporter

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

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

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

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

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

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

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

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

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

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

The appointment of counsel raised a new problem, however, as Hrko told Bostic, "Now that I've appointed counsel for you, I feel just a little bit uncomfortable arraigning you without him here."

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

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

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

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

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

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

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

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

Former Pineville town manager gets 18 months in prison

By Carra Higgins Register-Herald Reporter

PINEVILLE — Former Pineville Town Manager Brandee Phillips-Ellis, 30, will spend 18 months in a federal prison followed by three years of supervised probation for using her employment position to embezzle money from the town, United States District Judge Irene Berger determined Tuesday.

Phillips-Ellis pleaded guilty in March to embezzling money from the town of Pineville and Berger imposed the maximum prison time based on the level of Phillips-Ellis' actions and suggested guidelines from a pre-sentencing report.

Berger explained that when considering the sentence, she heavily weighed how the embezzlement of around \$80,000 between March 2009 and December 2012 has negatively affected the town of Pineville and its residents.

“Your conduct affected many people,” Berger told Phillips-Ellis. “The conduct is serious, but the impact is serious and has the potential to be long-term. ... This sentence is necessary.”

Berger added that she hopes the sentence deters not only Phillips-Ellis, but also others, from engaging in embezzlement acts in the future.

Phillips-Ellis cried as she told the court that she had great remorse for her actions and that her own and her family's reputation has been harmed, adding that she does not go into public in Pineville.

“I'm ashamed,” Phillips-Ellis said. “If I could take it back, I would.”

Pineville Mayor Tim Ellison, who had provided a letter before sentencing to the court explaining his thoughts about Phillips-Ellis' actions, spoke briefly during the sentencing. Ellison told the court that because of Phillips-Ellis' actions, the town has had to pay late fees and layoff employees because of the lack of funds for pay.

United Methodist Church Pastor Melissa White spoke during the sentencing on behalf of Phillips-Ellis. White told the court that during the last year she has gotten to know Phillips-Ellis on a more personal level and thinks that she is truly remorseful for what she did. White also said that she thinks Phillips-Ellis' generation has a “sense of entitlement” and has difficulty understanding that they must work for what they have.

Phillips-Ellis' attorney, John Mize, asked the court to consider probation and fewer months in prison. Berger explained, though, she thought the seriousness of the crime and the fact that

Phillips-Ellis used “sophisticated means” to take the money warranted the sentence.

Phillips-Ellis explained to the court in March that she was able to take the money because of her role as city manager. In that role, she created false travel vouchers and purchasing requests, which enabled her to have payment checks from the city written to her. She then deposited the checks in her name into her personal bank account. The amount of the checks ranged from approximately \$50 to \$1,800, Phillips-Ellis said.

Officials discovered Phillips-Ellis had been taking money when she attempted to deposit a check into the city’s bank account in order to repay some of the money she had taken from the city.

Phillips-Ellis has since repaid most of the restitution to the town of Pineville, but will still owes approximately \$10,000.

Phillips-Ellis also took funds from SAFE Housing and Economic Development (SHED) program by creating a false vendor. The SHED money has been repaid. Fines for the felony offense committed by Phillips-Ellis were not imposed. Berger said she determined that Phillips-Ellis does not have the financial means to pay them.

After the sentencing, Ellison told media outside the Federal Courthouse that “justice has been served” and he is looking forward to moving the town forward and “get back on track.”

Since Phillips-Ellis embezzled funds, council has put in place procedures that will help ensure the same thing does not happen in the future, Ellison added.

“There’s been a healing process for all of us,” he commented.

Assistant U.S. Prosecuting Attorney Eumi Choi prosecuted the case.

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

Pineville attorney sentenced in court

By Wendy Holdren

A Pineville attorney was sentenced in U.S. District Court Thursday to serve 18 months in federal prison for tax evasion.

Charles B. Mullins II, 52, of Daniels, pleaded guilty in August 2012 and admitted failing to pay more than \$389,000 in taxes from 2006 to 2009.

He admitted he also owes the public defender program \$223,605 and Daniels Capital Corp. \$184,030 by making false statements concerning the amount of work he did on court-appointed criminal defense work.

He also admitted to classifying personal expenses as business expenses, writing checks for his personal use from his office's client trust account and not accurately reporting his income to the IRS.

U.S. District Judge Berger sentenced Mullins to 18 months in prison, three years supervised release and ordered him to pay \$780,146 restitution.

During the court proceeding Thursday morning, Assistant U.S. Attorney Meredith Thomas made a motion to enhance Mullins' sentence because he allegedly asked several people to lie to investigators about his case.

Thomas called George Anthony "Tony" Reichert to the witness stand. Reichert said he has known Mullins for 20 years and he has represented him as an attorney previously.

Berger noted to Reichert that since he has pending charges of unlawful possession of a firearm, to be aware that his testimony could be used in future court proceedings.

Reichert initially said he did not want to testify without his lawyer present, but then changed his mind. He was hesitant to confirm or deny any dates brought to his attention by either attorney during questioning.

Reichert and his wife, Nancy, were the owners of a painting business and he alleged that Mullins asked him to tell investigators any painting services done at his home were actually done at his office.

After Reichert told Mullins he would not lie, Reichert alleged that his son was attacked and he believed Mullins was responsible, so he then called the FBI.

Assistant Public Defender Christian Capece noted Reichert's multiple prior convictions,

including testifying falsely under oath.

Capece asked him, "Since you've lied before in the past to benefit yourself, is it possibly you're doing so now?"

Reichert replied, "Yes, it's possible."

Capece offered no further questions.

After Reichert left the witness stand, Judge Berger said he ranks among the worst witnesses in terms of credibility that she has ever seen on the witness stand in her 30-year legal career.

Marvin Ray Garrett was called as another witness and his testimony contradicted previous interviews recorded with the counselors.

An obstruction charge would have nearly doubled Mullins' sentence and Berger said she was uncomfortable using either witness's testimony for a sentence enhancement.

"I am not convinced that an obstruction took place."

Mullins' sentence was delayed until the end of February, due to an optometrist appointment for a correctional procedure for his eye.

Disbarred Barbour attorney pleads guilty to mail fraud

November 14, 2012 7:43 AM
By Lawrence Smith

CHARLESTON – On the heels of surrendering her license, a Barbour County attorney has pled guilty to charges she defrauded the state in submitting inflated bills for court-appointed criminal defense work.

Lisa A. Weese formally pled guilty to a charge of mail fraud before Magistrate Judge John Kaul on Nov. 6 in the U.S. District Court. Five days earlier, the U.S. Attorney's Office filed a charge of information against Weese, 43 and of Belington, in the Northern District's Elkins Division, alleging for five years she falsely billed the state Public Defender Services for nearly \$160,000.

A charge of information means the accused is cooperating with prosecutors and intends to plead guilty.

According to the indictment, Weese was on the list of attorneys approved for public defender cases in Barbour, Randolph, Taylor and Tucker counties. In lieu of submitting them directly to PDS, Weese would submit the vouchers for the work she performed to a financing company that promptly remitted payment in exchange for a fee.

The two companies to which Weese submitted her vouchers were Daniels Capital in Birmingham, Ala., and Attorney Finance Corp. in Huntington. Though AFC's fee is not stated, Daniels' is 25 percent.

On one occasion, Weese asked Daniels to wire money to a bank in Colorado to enable her to purchase an antique race car. Details of the purchase are not stated in court records.

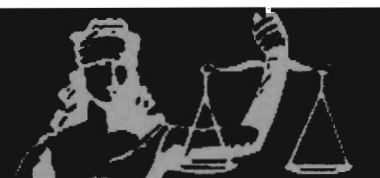
According to the indictment, an investigation conducted by the state Legislature's Commission on Special Investigations found between September 2006 and September 2011, Weese fraudulently billed PDS for \$159,130.08. The investigation determined Weese would had to have worked more than 10 hours a day for 537 days, and in some instances more than 24 hours.

Prior to her indictment, the state Supreme Court on Sept. 20 ordered Weese's disbarment. The Court's decision came in response to a petition filed earlier in the month by the Office of Disciplinary Counsel asking that her license be annulled by voluntary consent.

In West Virginia, a disbarment is an automatic five-year prohibition on practicing law. According to its website, Weese was admitted to the state Bar on Oct. 2, 1995.

As of presstime, a sentencing date has yet to be set. She faces up to 20 years in prison, three years of supervised release and a \$250,000 fine.

The case is assigned to Judge John Preston Bailey.



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

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

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May 13, 2013
FOR IMMEDIATE RELEASE

Belington Attorney Sentenced to Prison for Defrauding State Public Defender Services

ELKINS, WEST VIRGINIA - A 43 year old Belington attorney was recently sentenced to federal prison for billing the State of West Virginia for services that she did not perform.

According to United States Attorney William J. Ihlenfeld, II, attorney LISA A. WEESE was sentenced by Chief Judge John Preston Bailey to 12 months and 1 day imprisonment to be followed by three years of supervised release.

WEESE entered a plea of guilty on November 6, 2012 to "Mail Fraud." From September 2006 to September 2011, WEESE was a panel attorney in the Circuit Court of Barbour, Randolph, Tucker and Taylor Counties. During this five-year period, WEESE submitted fraudulent vouchers to West Virginia Public Defender Services claiming to have worked more than 24 hours on each of the forty-eight days and more than 16 hours on an additional one hundred and sixty-eight days. The total amount of loss based on compensation paid to her for work she did not perform was \$159,130.08. Judge Bailey is in the process of determining the precise amount of restitution that must be paid by WEESE and will provide a separate order regarding that issue in the near future.

WEESE, who is free on bond, will self-report to the designated Federal institution. The case was prosecuted by Assistant United States Attorney Stephen D. Warner and investigated by the West Virginia Commission on Special Investigations.

Area attorney sentenced to prison

May 14, 2013

The Inter-Mountain

A Belington attorney has been sentenced to federal prison for billing the state of West Virginia for services that she did not perform.

Lisa A. Weese, 43, was sentenced by Chief Judge John Preston Bailey to 12 months and 1 day imprisonment to be followed by three years of supervised release, according to U.S. Attorney William J. Ihlenfeld,

Weese entered a plea of guilty on Nov. 6, 2012 to mail fraud. From September 2006 to September 2011, Weese was a panel attorney in the Circuit Court of Barbour, Randolph, Tucker and Taylor counties. During this five-year period, Weese submitted fraudulent vouchers to West Virginia Public Defender Services claiming to have worked more than 24 hours on each of 48 days and more than 16 hours on an additional 168 days. The total amount of loss based on compensation paid to her for work she did not perform was \$159,130.08.

Bailey is in the process of determining the precise amount of restitution that must be paid by Weese and will provide a separate order regarding that issue in the near future.

Weese, who is free on bond, will self-report to the designated federal institution. The case was prosecuted by Assistant U.S. Attorney Stephen D. Warner and investigated by the West Virginia Commission on Special Investigations.

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.

SU employee charged with fraud

Director of Greek affairs faces 54 counts for alleged unauthorized purchases

April 19, 2013

By Edward Marshall (emarshall@journal-news.net) , journal-news.net
[Save](#) |

CHARLES TOWN - Shepherd University's director of Greek affairs has been directly indicted by a Jefferson County grand jury on 54 fraud-related counts for allegedly using a state-issued purchase card to make more than \$80,000 in unauthorized transactions during an alleged spending spree that dates back as far as 2010.

The indictment charges Elizabeth A. "Libby" Shanton, 48, with one count of felony fraudulent schemes and 53 felony counts of fraudulent or unauthorized use of a purchasing card.

A person can be directly indicted by a grand jury even if they have never been charged or arrested before in connection with the alleged crime for which they are indicted.

According to a copy of the indictment, one count accuses Shanton of using the card between July 1 and Aug. 3, 2011, to make purchases that were not for official state purposes, but which she claimed were official in her "purchase card transaction log" sheets. Shanton allegedly made \$85,932 in unauthorized purchases, according to the first count of the indictment.

The remaining counts of the indictment charge her with fraudulent or unauthorized use of a purchasing card detail alleged unauthorized purchases made between 2010 and 2012 that were not for official state purposes and for which she never presented itemized receipts.

See CHARGES, Page B2

The alleged unauthorized purchases were made from business in more than a half-dozen states, including West Virginia, Delaware, Georgia, California, Kentucky, North Carolina and New York. Items allegedly purchased included beauty supplies, knock-off cigars and perfumes, silk pillow cases, jewelry, purses, NFL apparel and replica jerseys, limousine service, and expensive stays at a hotel in New York City.

Among the most expensive purchases was a \$1,439 first-class airline ticket that was bought May 21, 2012, from United Airlines. On July 30, 2012, Shanton allegedly purchased \$752 worth of makeup, perfume, fragrance and beauty supplies at Sephora in New York using her state-issued purchase card. The most expensive charges made to the card came after Shanton allegedly racked up a \$2,304 bill during a four-night stay at the Marriott Marquis hotel in New York City in 2012, according to the indictment.

In another alleged spending spree, Shanton is accused of buying \$752 worth of Halloween costumes from a store in Hagerstown, Md. with her state-issued card. Four of the costumes were for characters from the Wizard of Oz. Shanton

The case was investigated by Steve Staton, of the Commission on Special Investigations, and Tim Butler, of the State Auditor's Office.

- Staff writer Edward Marshall can be reached at 304-266-8931, ext. 182.

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The Clarksburg Exponent Telegram

February 8, 2013

FSU investigation began with tip about 'suspicious activity'

by Jim Davis STAFF WRITER

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

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

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

"He was notified this morning," she added.

Feds seek forfeiture of Fairmont State official's Bridgeport home

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

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

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

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

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

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

By Travis Crum



David Phillip Smith

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**POWERS & DUTIES
OF THE
COMMISSION**

The West Virginia Code

ARTICLE 5.

COMMISSION ON SPECIAL INVESTIGATIONS

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

(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. (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.