
**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
Earl Ray Tomblin
Co-Chairman*

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

**Thirtieth Annual Report
to the
West Virginia Legislature
June 30, 2010**



WEST VIRGINIA LEGISLATURE
Commission on Special Investigations

CHARLESTON, WEST VIRGINIA 25311-1061

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January 25, 2011

West Virginia Legislature
Charleston, West Virginia

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

Respectfully submitted,

Earl Ray Tomblin, Co-Chairman
Commission on Special Investigations

Richard Thompson, Co-Chairman
Commission on Special Investigations

ERT:RT:lmw

While this is the 30th Annual Report of the Commission on Special Investigations, so named in 1980, it is the 42nd year the Commission has served the State as it was previously known as the Purchasing Practices and Procedures Commission. The name was changed with added authority in 1980. The following editorial, from the December 12, 2009 *Charleston Gazette*, illustrates how the Commission on Special Investigations has served the State for the last 42 years.

BIDS KEEP GOVERNMENT CLEAN

Publication: THE CHARLESTON GAZETTE
Published: Saturday, December 12, 2009

Competitive bidding - obtaining the lowest possible prices from rival vendors trying to sell goods or services to government agencies - is a universal safeguard against political corruption.

But this safeguard can be perverted. During West Virginia's notorious Barron administration in the 1960s, crooked state officials required crooked business owners to send bribes to phony out-of-state corporations, in return for bid-rigging that delivered state contracts to the bribe-payers. A Gazette investigation helped expose the fraud, which ended with dozens of prison terms.

Constant vigilance over the years by the Legislature's Commission on Special Investigations and other police groups has prevented recurrences of such major ugliness, but it's important to be on guard against any suspicious situations.

Two situations popped into the news this month. First, the owner of a Charleston firm agreed to plead guilty to concocting phony bids for around \$30,000 worth of remodeling work in Gov. Manchin's private office, the Governor's Reception Room, the office of former chief of staff Larry Puccio, and two adjoining offices.

A federal information says the owner created fake bids from "two purported competing companies ... to make it falsely appear that the state of West Virginia had obtained the legally required competing bids."

By law, a state purchase above \$10,000 requires at least three competing bids. Previously, the Gazette revealed that the firm had submitted 15 separate invoices, all under \$10,000, in an apparent attempt to evade the requirement for bids.

Puccio resigned from Manchin's staff last week - but gubernatorial aides say his departure had nothing to do with this bid-rigging. A legislative committee should investigate this smelly situation to determine whether any state officials knew that invoices were split into small sums, or that artificial bids were devised from dummy bidders.

The second dubious deal involved a Web site created for the state Council for Community and Technical College Education. The shady Comar Inc. firm of Cross Lanes offered to devise the site for \$29,500. When advised that such a project above \$25,000 required competitive bids, Comar reduced its price to \$24,000, on condition that it would have an inside track to make Web sites for 10 community colleges.

No further college contracts materialized, because Comar collapsed in a corruption scandal revealed by Gazette business editor Eric Eyre. After receiving \$17,096 in payments, Comar failed to complete its contract for the council's site. Comar CEO Albert Hendershot and chief technical officer Martin Bowling both pleaded guilty to various federal crimes - as did Bowling's mother, former grants manager of Workforce West Virginia, and her housemate, fired West Virginia State University development officer Christine Gardner.

Bidding laws are designed to protect taxpayers from shabby government deals in which excessive payments are made to political cronies. These laws work only if the bidding process is conducted in the daylight and scrutinized carefully.

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
Auditor's Office	5
West Virginia Lottery	6
Department of Administration	7
Bluefield Sanitary Board	8
Department of Military Affairs	11
Concord University	12
Nicholas County Office of Emergency Services	13
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 Thirtieth Annual Report to the West Virginia Legislature. This Report covers the Commission's activities from July 1, 2009 through June 30, 2010.

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, 2010:

<u>Senate</u>	<u>Appointed to Commission</u>
Earl Ray Tomblin - D (Co-Chairman)	1995
Don Caruth – R	2007
H. Truman Chafin - D	1999
Donna Boley - R	2001
Walt Helmick – D	2009

<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, 2010:

<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, 2009 through June 30, 2010)

During the course of this fiscal year, the Commission on Special Investigations opened nine investigative files and closed five investigations. As of June 30, 2010, there were 75 active investigations. The Commission met 10 times between July 1, 2009 and June 30, 2010. 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.

A November 2010 trial date has been set for Nancy Burkhart on all charges.

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.

As of June 30, 2010, disposition of charges against A. Michael McPeck and James Larry Hymer are pending.

Office of Economic Development (Workforce Investment Programs)

In March 2009, an article appeared in *The Charleston Gazette* stating that Mary Jane Bowling, who oversees "Federal set aside grants", had hand delivered one of the grant payments to Comar, Inc., and its subsidiary VEC-3, where her son, Martin Bowling, worked as Chief Financial Officer. Martin Bowling was in jail at the time of the news article after being sentenced to prison for stealing credit card numbers and making purchases with them.

CSI Investigators and agents with the FBI examined numerous documents from Workforce West Virginia and conducted interviews with Workforce Investment Program personnel. Federal Grand Jury subpoenas were served on Albert Hendershot and his company, Comar, Inc., requesting all documents pertaining to State Workforce Investment Programs. Federal search warrants were obtained to gather evidence at the residence of Mary Jane Bowling and Christine Gardner, attempting to identify the misuse of State Workforce Grant Programs.

CSI Investigators and FBI agents presented evidence to a Federal Grand Jury. Investigators developed evidence to indicate misuse of Federal grant funds administered by Workforce West Virginia.

As a result of this investigation the following individuals pled guilty in US District Court, Charleston, West Virginia, to misuse of Federal Grant money and were sentenced by US District Judge John Copenhaver on June 14, 2010: May Jane Bowling, former Grant Coordinator, Workforce West Virginia – five (5) years probation, three (3) months home confinement, \$1,000 fine; Christine Gardner, former Grant Coordinator, WV State University – three (3) years probation, \$250 fine; Albert Hendershot, CEO Comar, Inc. – six (6) months incarceration, five (5) years probation, \$1,000 fine; and Martin Bowling, Chief Financial Officer, Comar, Inc. – six (6) months incarceration and five (5) years probation.

All the defendants were ordered to pay restitution totaling \$11,633.

Auditor's Office (Corporate ID Theft/Fraud)

On April 30, 2009, this office was informed by the State Auditor's office that three payments to two State vendors had been electronically diverted to fraudulent accounts

resulting in the theft of State monies totaling \$1,998,748.56. This office notified the US Attorney's Office and initiated an investigation in conjunction with the US Secret Service which, on June 30, 2009, produced a Federal Grand Jury Indictment charging Angella Methoni Chegge-Kraszeski, a native of Kenya, with conspiracy to engage in illegal monetary transactions.

As the investigation continued in an effort to identify the other conspirators, it became clear that, in addition to West Virginia, the conspirators had defrauded the states of Massachusetts, Kansas, and Ohio. On August 13, 2009, a CSI investigator received an anonymous telephone call from an individual who claimed to have additional knowledge of the identities of the other conspirators. Through careful development of this source, the CSI investigator was able to gain the caller's trust and he subsequently provided information resulting in the indictment of five additional co-conspirators, Michael Ochenga, Robert Otiso, Paramena Shikanda, Albert Gunga and Colins Masese, all Kenyan nationals living in the United States, on charges of conspiracy, money laundering and fraud.

As of June 30, 2010, all six of the co-conspirators have pled guilty and are awaiting sentencing in federal court. Angella Methoni Chegge-Kraszeski pled guilty to charges of engaging in illegal monetary transactions. Colins A. Masese, Paramena J. Shikanda, Albert E. Gunga, and Michael M. Ochenga pled guilty to charges of conspiracy to commit money laundering. Robert Otiso pled guilty to charges of conspiracy to commit mail and wire fraud.

To date the investigation has resulted in the recovery of \$482,835.49 of the stolen money. The investigation continues in order to identify and prosecute additional conspirators and recover the remaining State funds.

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.

As of June 30, 2010, neither Kitchen nor Ferrell have made court appearances.

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, 2010, 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 Scheme
- 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.

CSI is currently working with the Mercer County Prosecuting Attorney as that office prepares for trial of all five subjects under indictment. The trials, originally scheduled to begin in June 2010 have been rescheduled to begin in November 2010.

Department of Military Affairs

In May 2010, the Commission on Special Investigations was asked by the Office of the Prosecuting Attorney for Kanawha County to investigate allegations arising out of injuries received by Basic Officer Christopher Winkler during Multiple Assailant Training

(MAT) at the West Virginia State Police Academy in order to determine if there was any criminal conduct on the part of any persons involved. At that time, an investigation was initiated.

Commission Investigators pursued all sources of evidence, including interviews of Officer Winkler and his parents, State Police Academy Staff, and all students who witnessed the incident or had other relevant information. Additionally, medical records were examined, and the treating physicians were interviewed by CSI Investigators concerning the incident. State Police Academy training curriculum was also reviewed.

From the evidence gathered by CSI Investigators, it is clear that Officer Winkler sustained a traumatic head injury during MAT training. The injuries were not from an earlier boxing session. The injuries were also not the result of any pre-existing medical condition, nor were they the result of Officer Winkler holding his breath, as both had been suggested by the West Virginia State Police.

MAT training is conducted with two training officers simulating an attack on the trainee. Protective gear is worn, and two staff observers are present to keep the parties from leaving the area of protective flooring, and to monitor the engagement. The investigation indicated that all protocols were followed by Academy staff.

At some point during his MAT training, Officer Winkler was struck in the head, began to lose vision and went to the ground, losing consciousness for a short period of time. Contrary to news reports following the incident, all eyewitnesses during training deny that Officer Winkler was struck after losing consciousness. In addition to the two training officers and the two observers, four students also observed the incident from start to finish. These student officers, now employed by city and county police departments in geographically diverse areas of the state, were interviewed (independently of each other) by CSI Investigators after leaving the State Police Academy. Each of these officers confirmed that no one struck Officer Winkler after he went down. Moreover, most felt their own MAT training was more aggressive, and were surprised that Officer Winkler was hurt at all. Officer Winkler's treating physician at Cabell Huntington Hospital advised that the injury he experienced was not unusual for this type of training.

In summary, after a careful review by CSI Investigators and members of the Kanawha County Prosecuting Attorney's Office, while a serious head injury did occur during the MAT training, the evidence **does not** suggest any malicious or criminal intent on the part of the training officers involved, either individually or collectively. Accordingly, the Office of the Kanawha County Prosecuting Attorney did not pursue criminal charges stemming from this incident.

Concord University

In October 2006, the Commission on Special Investigations was advised of problems at Concord University involving the purchases made utilizing State Purchasing Cards issued to the university. An investigation was initiated in January 2007.

After Commission on Special Investigations' investigators examined numerous purchasing card invoices and conducted over 30 interviews, Investigators identified that Larry Keith Hurst, who was the owner of Seminole Fire Equipment, had submitted numerous false invoices to Concord University for services that were not performed or equipment that was not delivered, yet paid for with various University purchasing cards.

In July 2009, evidence was presented to the Kanawha County Grand Jury by Commission on Special Investigations Investigators. The Grand Jury returned an indictment against Larry Keith Hurst charging him with 16 felony counts of fraudulent schemes.

On June 8, 2010, Larry Keith Hurst pled guilty in Kanawha County Circuit Court to two (2) counts of obtaining money by false pretenses.

Mr. Hurst was placed on two (2) years' probation and ordered to pay the State of West Virginia restitution in the amount of \$10,000.

Nicholas County Office of Emergency Services

In May 2008, CSI began an investigation into allegations of criminal and inappropriate behavior on the part of Nicholas County Emergency Services Director Alfonso Joseph "Joey" Derito Jr. and other employees of the Nicholas County Office of Emergency Services 911 Center. The allegations included the misuses of state and county funds, purchase of personal items with county credit card, repair of personal vehicles charged to county credit cards, paying for hotel rooms for trysts with fellow

employees with county funds, purchase of cell phones for personal use at taxpayer's expense, and falsifying records of testing for National Incident Management Systems Training for emergency services personnel in order to qualify for Federal Homeland Security grant money.

The Commission conducted interviews and obtained copies of purchase orders, credit card receipts, hotel receipts, cell phone bills and other documentation to support the allegations.

As a result of the investigation by the Commission staff and the West Virginia State Police, on September 6, 2008, Joey Derito Jr. was indicted by a Nicholas County Grand Jury on three (3) felony charges of falsifying accounts. He resigned from his position as the Director of the Nicholas County Office of Emergency Services the same day.

On June 16, 2009, Mr. Derito entered a plea of guilty to one (1) felony count of falsifying accounts in Nicholas County. As part of the plea agreement, two additional charges in Nicholas County and one in Fayette County were dismissed.

On August 21, 2009, Derito was sentenced on one (1) felony count of falsifying accounts in Nicholas County Circuit Court to one-to-ten years in the State penitentiary. This sentence was suspended and Derito served 30 days in the Southern Regional Jail and 30 days in the Nicholas County Day Reporting Facility, followed by five (5) years probation during which he will perform an additional 550 hours of community service and make financial restitution in the amount of \$5,466.66. As of the date of this report, Mr. Derito has served both 30 day terms, had paid the restitution in full and is performing his community service obligation as required by the terms of his probation.

**NEWS
ITEMS**

[Print this Page](#)

[←--back to story](#)

Former attorney accepts plea deal to defrauding

Heidi Janelle Silver Myers was accused of defrauding the West Virginia Public Defender Service

By Edward Marshall, Journal Staff Writer

POSTED: April 2, 2010

MARTINSBURG - Former Martinsburg attorney Heidi Janelle Silver Myers, who was accused of defrauding the West Virginia Public Defender Service for payment for court-appointed attorney services, pleaded guilty Thursday to aiding and abetting mail and wire fraud in Martinsburg's U.S. District Court.

Myers pleaded guilty to the two counts after agreeing to accept the terms of a plea agreement offered by the U.S. Attorney's Office for the Northern District of West Virginia.

She had been named in an indictment containing more than 100 counts in June 2007 after allegedly over-billing the state for cases in which she was a court-appointed attorney, following an investigation by the West Virginia Commission on Special Investigations.

"Heidi definitely regrets her conduct and she has already paid for that conduct with the loss of her profession and the loss of her reputation she had earned as a hardworking lawyer," her attorney, Andrew Arnold, said after Thursday's hearing.

Under the terms of the agreement, Myers agreed to be completely forthright and truthful with government attorneys, as well as provide statements and possible trial testimony if requested to do so.

Myers has waived all privileges to her law office's files after the government agreed to recognize and preserve the security and confidences of Myers' past clients.

Federal Magistrate Judge David Joel accepted Myers' two guilty pleas, but he held off on accepting the terms of the plea agreement until a pre-sentence report is completed and a sentencing hearing is held in the case.

"It's the finding of this court that ... Myers understands the consequences of her plea of guilty," Joel said.

Sentencing will not be scheduled until the completion of the pre-sentence report.

Myers could face a maximum of no more than 20 years in prison and a fine of up to \$250,000 on each count, but the sentencing guidelines will not be determined until the completion of the pre-sentence report.

The hearing also included testimony from U.S. Postal Inspector Gordon K. Gournic. He testified that court-appointed attorneys assigned to cases involving defendants who are either indigent or who are unable to afford an attorney are reimbursed by the West Virginia Public Defender Service for attorney services. These attorneys are supposed to send vouchers via mail detailing the amount of hours they have provided attorney services both in and out of court. Gournic testified that rate is typically \$45 per hour for attorney services provided outside of court and \$65 per hour for services provided in court.

Myers was accused of fraudulently seeking reimbursement for attorney services that met or exceeded 24 hours per day on 147 different occasions, which led to the charges of mail fraud.

Myers' law office was provided with more than \$240,000 in reimbursements between 2004 and 2006, according to court records.

When the state runs out of funds in any given year to reimburse court-appointed attorneys, the lawyers are provided with vouchers promising future payments once additional funds are acquired. However, there are companies that will pay up to 75 percent of the money owed to the attorneys in advance minus wire transfer fees, thus obtaining profit once the actual reimbursement is issued.

The wire fraud charges Myers faced stemmed from money she was wired from the Alabama-based company Daniels Capital Corp., which allegedly provided Myers' office with more than \$190,000 in advances.

Myers was sentenced in 2008 to four months in prison and four months of home detention by Federal Judge Frederick P. Stamp Jr. after being convicted of criminal contempt. She was convicted following a two-day bench trial for her failure to answer two subpoenas requiring her to appear before a federal grand jury in Wheeling in December 2006.

Her failure to appear led her to be indicted in December 2006 on one count of criminal contempt. The subpoenas required her to produce certain closed court-appointed case files, a network server and a backup hard drive that were missing from her law office when a search warrant was executed during the investigation of her practice.

Article Photos



Myers

Her law license was annulled in April 2008 by the state's Supreme Court as a result of her contempt conviction.

As recently as this month, the government sought to have Myers be held in contempt again after she gave notice to the court that she could comply with only 80 percent of the court's previous orders commanding her to produce files, a tower server and a backup hard drive.

Myers had indicated she could deliver the files, but without explanation informed the court she couldn't deliver the tower server and backup hard drive as commanded by the court on several occasions.

Acting U.S. Attorney Betsy C. Jividen subsequently demanded that the court order Myers surrender herself to the U.S. Marshals service for failing to comply with the court's orders.

However, the government rescinded after Myers indicated she would accept the terms of the plea agreement and entered a debriefing session.

The case was prosecuted by assistant U.S. attorneys Thomas O. Mucklow and Paul T. Camiletti. It was investigated by the U.S. Postal Inspection Service and Commission on Special Investigations.

Myers remains free on bond while awaiting sentencing.

- Staff writer Edward Marshall can be reached at 304-263-8931, ext. 182, or emarshall@journal-news.net

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COLLEGE PRESIDENT FACES CHARGES MAN INDICTED IN HANDLING OF LOAN FOR INTERNET ACCESS

Publication: THE CHARLESTON GAZETTE
Published: Thursday, September 03, 2009
Byline: ANDREW CLEVINGER STAFF WRITER

The president of a private college in Parkersburg faces federal obstruction and perjury charges for allegedly lying to a grand jury and misleading federal auditors about the misappropriation of millions of dollars of a federal loan.

Alan Michael McPeek, president of Mountain State College, also served as chairman of the board of the for-profit Sequelle Communications Alliance Inc., a publicly funded project designed to improve broadband Internet access to the largely rural mid-Ohio Valley region.

The Sequelle project, which received a \$3.295 million loan from the U.S. Department of Agriculture in 2002, fell apart before completion. West Virginia's Development Office awarded the project a \$600,000 grant, with an additional \$400,000 coming from loans from the Mid-Ohio Valley Regional Council and a private bank.

Federal prosecutors have accused officers with Sequelle and several Ohio-based subcontractors of misappropriating more than \$2.4 million, mostly to form a new company designed to market Sequelle's "Internet in a box" concept nationally.

Last year, a federal grand jury indicted Heidi C. Laughery, Sequelle's principal founder and former CEO, as well as James Larry Hymer and R. Scott Truslow, executives with two of the subcontractors, MentorGen LLC and Truscom LLC. MentorGen, the company, was also charged.

In February, Laughery pleaded guilty to conspiring with others to funnel almost \$250,000 in government funds back to herself. Truslow and MentorGen have also entered guilty pleas to money laundering charges and are awaiting sentencing.

Rather than proceed with the case against Hymer, prosecutors dropped the charges against him in February so they could continue to investigate.

As part of her plea agreement, Laughery - who was convicted in 1987 of embezzling more than \$133,000 from clients' accounts when she worked for as a broker for Merrill Lynch in San Francisco - agreed to cooperate with the government's investigation.

The new information that came to light when Assistant U.S. Attorneys Anna Forbes and Booth Goodwin debriefed Laughery is presumably the basis for the new indictment against Hymer and McPeek.

According to the new indictment, which was returned on Wednesday, Hymer and McPeek intentionally misled federal auditors conducting a quality assurance inspection in 2005.

Hymer, a founding partner and chief financial officer of MentorGen who served as project manager for the Sequelle account, allegedly submitted two financial spreadsheets to the federal auditors that falsely characterized MentorGen's expenses in the Sequelle project.

"These false financial entries concealed secret payments to Heidi Laughery and MentorGen's purchase of \$143,000 of stock in Sequelle," the indictment states.

McPeek also allegedly tried to hide information, knowing that if the scheme came to light, Sequelle would have to return the federal funds.

In addition, McPeek lied under oath to a grand jury in August 2008 when he said he didn't know about the misuse of funds to pay Laughery and the purchase of Sequelle stock, according to the indictment.

McPeek did not return a call to his office at Mountain State College on Wednesday.

Hymer also faces obstruction charges for allegedly providing false information to federal investigators in March 2007.

He allegedly denied any knowledge of the scheme to pay Laughery with government funds. According to the terms of the federal loan, the funds had to be used for construction costs, and not to pay Sequelle's salaries and company expenses.

During her plea hearing, Laughery said that she met with Truslow, Hymer and other MentorGen executives in the fall of 2003 and told them she hadn't been paid in two years. They arranged to route money to her through MentorGen and Truscom, she said.

Herbert Cogar, an investigator with the West Virginia Legislative Commission on Special Investigations, testified at Truslow's plea hearing in September 2008 that Hymer said at the 2003 meeting that it "would not look good" for Laughery to be paid directly by MentorGen. Sam Wooster, the company's chief technology officer, was concerned that it would look like a "kickback," Cogar said.

Between that meeting and December 2004, Laughery was paid roughly \$70,000 by Sequelle, he said. Her total compensation for that period, including the illegally laundered funds, was around \$325,000, he said. Laughery's compensation package included the use of an Infiniti G30 sedan, he said.

Throughout 2004, Laughery reportedly devoted significant amounts of her time to the new company instead of the publicly funded broadband project. She eventually resigned from Sequelle, recommended that the company file for bankruptcy and became MentorGen's chief executive officer, according to court records.

By the fall of 2005, just months after Sequelle's board of directors filed a \$10 million lawsuit against Laughery in Wood Circuit Court, prosecutors had launched a grand jury investigation. Sequelle collapsed before the civil lawsuit was resolved, leaving no party to seek damages.

U.S. District Judge Robert C. Chambers has postponed sentencing for Laughery, Truslow and MentorGen while the possibility of additional charges against others involved remained.

Reach Andrew Clevenger at aclevenger@wvgazette.com or 304-348-1723.

Woman gets prison time for scheme

■ She collected millions in government funds for a broadband start-up and later embezzled some of it

PARKERSBURG NEWS and SENTINEL

PARKERSBURG — A woman accused of taking large sums of government money in a local startup broadband Internet company project has been sentenced to 18 months in prison.

Heidi C. Laughery of Meadville, Pa., formerly of Marietta, was sentenced by U.S. District Court Judge Robert Chambers. She was convicted of one count of conspiracy to commit money laundering.



LAUGHERY

Once freed from prison, Laughery will be placed on supervised release for three years. She was ordered to pay \$348,871 in restitution.

R. Scott Truslow also was sentenced Monday by Chambers to six months home confinement after pleading guilty to one count of conspiracy to commit money laundering conspiracy.

He was ordered to pay \$548,571 in restitution.

The charge against Laughery originally was part of a 12-count indictment that accused the former Marietta city development director of illegally obtaining millions in federal grant money and embezzling some of it.

In a plea agreement worked out last year, Laughery agreed to plead guilty to the one charge. The remaining 11 charges were dropped.

She was the CEO of Sequelle, a company that Laughery said was going to bring high-speed wireless Internet service to southeast Ohio and parts of West Virginia.

The project was funded mostly by money from the Rural Utilities Division of the U.S. Department of Agriculture, as well as a \$600,000 grant from the state of West Virginia handed out during the administration of Gov. Bob Wise.

Prosecutors said Laughery received more than \$240,000 of laundered money from December 2003 to September 2004. Officials said money from the agriculture department was funneled to Laughery through two other companies: Mentorgen and Truscom.

Worthington, Ohio-based Mentorgen LLC provided engi-

neering services to Sequelle, and Laughery later became that company's CEO.

Truslow, who was Columbus-based Truscom's founder and sole employee, provided engineering services to Sequelle, officials said.

Laughery, Truslow and principals at Mentorgen conspired to prepare and submit false invoices that resulted in money being paid from the USDA to Mentorgen and Truscom, according to prosecutors.

That money was then transferred to Laughery, even though the funding was not supposed to be used for

salaries, officials said.

A member of the West Virginia Commission on Special Investigations had previously testified Laughery told those involved she wasn't being paid for her work with Sequelle. Truslow testified that he, Mentorgen CFO James Larry Hymer and another Mentorgen officer agreed with Laughery to pay her from the government funds and conceal the source of the money by putting Truscom on Mentorgen's books as a consultant, even though Truslow never did any consulting work for the company, the charges state.

June 30, 2010

College president admits obstructing justice in failed broadband project

By Andrew Clevenger, Staff writer

The Charleston Gazette

CHARLESTON, W.Va. -- The president of a private college in Parkersburg pleaded guilty to obstruction of justice in federal court Wednesday, admitting that he misled investigators looking into misappropriation of a \$3.295 million federal loan in 2005.

Alan Michael McPeck, 63, who has worked for Mountain State College for more than 35 years, also served as chairman of the board of the for-profit Sequelle Communications Alliance Inc., a publicly funded project designed to improve broadband Internet access to the largely rural mid-Ohio Valley region.

The Sequelle project, which received a \$3.295 million loan from the U.S. Department of Agriculture in 2002, fell apart before completion. West Virginia's Development Office awarded the project a \$600,000 grant, with an additional \$400,000 coming from loans from the Mid-Ohio Valley Regional Council and a private bank.

Federal prosecutors have accused officers with Sequelle and several Ohio-based subcontractors of misappropriating more than \$2.4 million, mostly to form a new company designed to market Sequelle's "Internet in a box" concept nationally.

Last year, a federal grand jury indicted Heidi C. Laughery, Sequelle's principal founder and former CEO, as well as James Larry Hymer and R. Scott Truslow, executives with two of the subcontractors, MentorGen LLC and Truscom LLC. MentorGen, the company, was also charged.

Laughery subsequently admitted that she conspired with others to illegally funnel almost \$250,000 to herself as salary, which was not allowed under the terms of the loan. In April, she was sentenced to 18 months in prison and ordered to pay \$850,000 in restitution.

Truslow, who pleaded guilty to conspiring to commit money laundering, was placed on home confinement for six months and ordered to pay almost \$550,000 in restitution. Charges against Hymer are still pending.

McPeek admitted that he knew that money from the federal loan had been used to pay Laughery's salary. When federal auditors investigated the Sequelle project in 2005, McPeek intentionally withheld information, according to a stipulation of facts entered as part of his plea agreement.

"He further knew that such misapplication of these public funds would be of significant and material interest to the [federal] auditors and would cause the auditors to further scrutinize the use of the loan funds," the stipulation reads.

A grand jury indicted McPeek on charges of obstructing a federal audit and lying to a grand jury. Assistant U.S. Attorney Anna Forbes agreed to drop those charges in exchange for McPeek pleading guilty to obstruction of justice.

McPeek faces up to five years in prison when sentenced by U.S. District Judge Thomas E. Johnston on Oct. 19. He was released on a \$10,000 unsecured bond pending sentencing.

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COMAR CEO, STATE OFFICIALS ADMIT GUILT IN GRANT SCANDAL

Publication: THE CHARLESTON GAZETTE
Published: Wednesday, December 09, 2009
Byline: ERIC EYRE

Staff writer

A Cross Lanes marketing executive and two former state officials pleaded guilty Tuesday to federal criminal charges in the wake of a work force training grant scandal.

Comar Inc. CEO Al Hendershot, former Workforce West Virginia manager Mary Jane Bowling and former West Virginia State University extension agent Christine Gardner admitted they misused federal grant money administered by the state Workforce West Virginia office.

The three also took part in an elaborate scheme to conceal their crimes, according to plea agreements filed Tuesday.

The cover-up included altered credit card receipts, phony documents, fake invoices and backdated checks.

Hendershot, Bowling and Gardner each face a maximum of two years in federal prison and a \$250,000 fine, after reaching the plea deal with federal prosecutors. Sentencing is scheduled for March 17.

On Tuesday, Bowling, who administered federal grants at Workforce West Virginia, admitted that she advised her son, former Comar chief technical officer Martin Bowling, what to include in a \$100,000 grant application that the company submitted to the state employment agency in 2008.

While Workforce West Virginia reviewed the application, Mary Jane Bowling forged a co-worker's signature on a grant evaluation form "to disguise the fact that Ms. Bowling was really the person that reviewed the Comar grant proposal," according to Bowling's plea agreement.

Bowling gave Comar's grant application a perfect score.

"I signed Pam Williams' name to the evaluation form of the grant so it appeared she had reviewed the proposal," Bowling told U.S. District Court Judge John T. Copenhaver Jr. during a hearing Tuesday at the Robert C. Byrd U.S. Courthouse in Charleston.

Bowling, 58, also admitted that she encouraged her supervisor at Workforce West Virginia, Steve Dailey, to support Comar's grant application.

Bowling failed to disclose to the agency's former executive director, Ron Radcliff, that her son worked at Comar, she told the judge Tuesday. With Radcliff's blessing, Comar was awarded the \$100,000 grant in July 2008.

In March, Workforce West Virginia started an audit of Comar's grant after The Charleston Gazette published a series of stories about Mary Jane Bowling's involvement.

In response, Bowling instructed Comar employees to place documents in a company office file to substantiate the firm's request to use grant funds to attend training seminars, according to the plea deal.

Bowling also asked Comar workers to alter credit card receipts to conceal grant reimbursements.

Gardner, who is Bowling's roommate and Martin Bowling's godmother, told Copenhaver Tuesday that she received a \$5,000 check for helping to write the grant application, even though the grant stipulated that money couldn't be distributed for that purpose.

Gardner made numerous trips to Comar's office to meet with Martin Bowling and write the grant, which was funded by the U.S. Department of Labor, according to her plea deal filed Tuesday.

Gardner later deposited the \$5,000 into a joint bank account she held with Mary Jane Bowling.

"I received \$5,000 for helping to write the grant," said Gardner, who was fired earlier this year as director of WVSU's Economic Development Center in Charleston. "When I learned it came out of the grant, I failed to give it right back."

Gardner, 59, also acknowledged that she later submitted a fake invoice to Comar to make it appear she had provided services to Comar after the company received the grant, even though she had helped with the grant application eight months earlier.

Gardner gave the phony invoice to Hendershot and asked him to show it to state auditors, which "he agreed to do," according to her plea agreement.

After Workforce West Virginia demanded the \$5,000 back last spring, Gardner told Hendershot to return the money. Gardner then submitted a backdated check and wrote a note, falsely claiming she had returned the money in July 2008.

As part of the cover-up, Gardner and Hendershot also agreed that he would write a letter to WVSU officials, stating that Gardner didn't work for Comar while she was supposed to be working for the university's Economic Development Center, according to Gardner's plea deal.

Gardner took the letter and yet another uncashed backdated check and told WVSU administrators that she tried to pay back the \$5,000 immediately in 2008, according to Tuesday's filing.

Meanwhile, Hendershot, 62, admitted Tuesday that he diverted \$5,000 of the grant to Bowling's then-girlfriend, Mandi Felty, even though he knew Felty did no work. The grant funds ultimately were redirected to Martin Bowling as an "employee bonus" for his help in securing the grant through his mother at Workforce West Virginia.

"I paid \$5,000 to someone who did not participate in the grant," Hendershot told Copenhaver Tuesday.

"And it was paid as a bonus to [Martin Bowling] for helping to obtain the grant?" Copenhaver asked.

"[Bowling] said he didn't want the payment made out to him, but to Ms. Felty," Hendershot said.

Felty and Bowling have since married.

Amid the audit in April, Mary Jane Bowling gave Felty \$5,000 in cash to repay Comar, and then told Felty not to tell anyone where she got the money, according to Tuesday's filing. Felty used the money to obtain a cashier's check, which she turned over to Comar.

In August, Martin Bowling pleaded guilty to federal charges, admitting he took part in the scheme to divert federal grant money. He's also expected to be sentenced March 17.

Hendershot, Gardner and Mary Jane Bowling were released on unsecured \$10,000 bonds Tuesday.

Hendershot said he's now living in Myrtle Beach, S.C., and has put his Charleston home up for sale.

Copenhaver granted Hendershot permission to travel between Myrtle Beach and Charleston to sell his house, appear in court and meet with his lawyer, Bob Martin. The judge directed Hendershot to surrender his passport.

Hendershot's wife, April, and two family members attended Tuesday's hearing.

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

WORKFORCE W.VA. GRANT SCANDAL WVSU FIRES BUSINESS CENTER DIRECTOR CHRISTINE GARDNER WAS CHARGED LAST WEEK WITH EMBEZZLEMENT

Publication: THE CHARLESTON GAZETTE

Published: Friday, September 25, 2009

Byline: ERIC EYRE STAFF WRITER

A West Virginia State University administrator has been fired amid a state workforce training grants' scandal, according to university employees and other officials familiar with the investigation.

Christine K. Gardner, an extension agent who has directed WVSU's Economic Development Center in Charleston since 2005, was charged last week with embezzling part of a \$100,000 grant awarded last year to Comar Inc., a Cross Lanes marketing firm.

Federal prosecutors filed the charge as an "information," signaling that Gardner plans to plead guilty.

"My client has signed a plea agreement and is cooperating with federal authorities," Charleston lawyer Mike Callaghan said Thursday. "She's doing everything she can to rectify the situation."

WVSU officials confirmed Thursday that Gardner, 58, no longer works for the university, but they declined to comment on the specific reasons for her departure.

Gardner's payroll records show she was paid through Sept. 15. Her co-workers and others familiar with her employment said she was terminated late last week.

The state Legislature's Commission on Special Investigations and the Federal Bureau of Investigation started investigating Gardner in April, following a series of Gazette reports about federal grants distributed by former state Workforce West Virginia manager Mary Jane Bowling.

Gardner and Bowling share the same house in Cross Lanes.

Federal prosecutors also have charged Bowling with misappropriating grant money.

State and federal agents raided the Cross Lanes house last May, seizing computers and documents.

In a affidavit filed to justify the search, federal and state authorities alleged Bowling and Gardner took part in an elaborate cover-up to conceal the misuse of a \$100,000 "Governor's set-aside grant" funded by the U.S. Department of Labor last spring.

Gardner received \$5,000 from the grant as a "personal adviser" to Comar, and she deposited the money into a joint bank account she holds with Bowling, according to the FBI affidavit.

Bowling administered and distributed the grant money, and hand-delivered the first grant payment - which included money for Gardner - to Comar's office, records show.

The Gazette has previously reported that Gardner received \$5,000 for 10 days of work in July 2008, even though she continued to collect her WVSU salary in full during the same period.

Eight months later, Gardner obtained a letter for Comar CEO Albert Hendershot, who advised WVSU officials that Gardner did no consulting work for Comar during her normal Economic Development Center work hours.

During the investigation, the FBI discovered allegedly falsified invoices submitted by Gardner to Comar for payment, according to the affidavit.

Gardner, who made \$45,968 a year to manage WWSU's business center on Charleston's West Side, was hired in 2005, after interviewing before a committee that included Bowling.

The Economic Development Center, which has received more than \$1.7 million in grants since 2006, provides employment-training programs and serves as an incubator for "micro-businesses."

Bowling has steered more than \$128,000 in federally funded "set-aside" grants to the business center during the past three years.

Gardner previously worked at the state Development Office, where she was assigned to recruit Canadian businesses.

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

August 25, 2009

Former Comar executive Bowling pleads guilty

By Eric Eyre

Staff writer

CHARLESTON, W.Va. -- Former Cross Lanes computer executive Martin R. Bowling admitted Tuesday that he took part in a scheme to divert federal grant money that he ultimately received as an employee bonus.

Bowling, 30, faces a minimum of two years in federal prison or a maximum four-year term. He's scheduled to be sentenced Dec. 3.

Bowling, who pleaded guilty Tuesday, is cooperating with federal and state authorities investigating the misuse of a \$100,000 technology-training grant awarded by the state Workforce West Virginia office last year to Comar Inc., an Internet marketing and publishing firm in Cross Lanes.

"Mr. Bowling has accepted responsibility for his actions," said Mark French, a lawyer with Criswell & French law firm who represents Bowling. "He wants to pay his debt to society and is cooperating with all law enforcement officials to achieve that goal."

Bowling, former chief technical officer at Comar, told a judge Tuesday that he and others falsified documents to pay his girlfriend at the time, Mandi Felty, \$5,000 as a "personal adviser" on the grant.

But Felty performed no work, and Bowling received the \$5,000 as a bonus for helping Comar secure the \$100,000 grant, Bowling said Tuesday. Bowling and Felty have since married.

"I was paid a \$5,000 bonus through which I helped create documents so that it could be paid through the grant," Bowling told U.S. District Judge John T. Copenhaver, who asked Bowling to explain his crime.

At the time, Bowling's mother, Mary Jane Bowling, distributed the \$100,000 grant while working as a state Workforce West Virginia administrator. Mary Jane Bowling has since resigned amid the scandal.

Martin Bowling's godmother, Christine Gardner, also received \$5,000 from the grant for consulting work.

Gardner and Felty purported to provide a "needs assessment" study after Comar was awarded the grant, according to Bowling's plea agreement. The Gazette has previously reported that Gardner helped write Comar's grant application.

Comar publishes MetroValley magazine.

The FBI and state Legislature's Commission on Special Investigations continue to look into the grant misappropriation. A federal grand jury is hearing testimony in the case. The grand jury next meets Sept. 14.

Also Tuesday, Bowling admitted he stole people's credit card numbers in 2006 and used them to purchase artwork and other merchandise on the Internet. Bowling was working for Parkersburg-based Woodcraft Magazine at the time.

"I knowingly used the credit cards without authorization to make those purchases," Bowling told Copenhaver.

The charge holds a mandatory two-year prison sentence. Federal prosecutors had to get a special waiver to prosecute Bowling on a charge he previously was convicted of in Kanawha County Circuit Court.

Bowling was convicted on similar charges in Kanawha Circuit Court last March. Bowling has agreed to pay \$4,495 in restitution to the credit cardholders.

Kanawha Circuit Judge Jennifer Bailey sentenced Bowling to three years in prison, but later reduced the sentence to a year of home confinement and five years of probation. Bowling was released from prison after his friends and family wrote letters to Bailey and packed a Kanawha County courtroom to show their support.

During the March hearing, Bowling choked back tears and told Bailey, "With a second chance, I will never appear before this court or any other court. I've let so many people down. It's not who I am. I'm not that person."

Bowling's wife and two of his friends sat through Tuesday's plea hearing at the Robert C. Byrd U.S. Courthouse in Charleston. His mother and godmother did not attend.

Wearing his trademark black-rimmed designer eyeglasses, Bowling appeared poised and answered Copenhaver's questions without hesitation. He was released on \$10,000 bond.

Bowling told the judge he was now self-employed, working for a company called 27 Creative.

As a condition of his release before sentencing, Bowling was ordered to abstain from drinking alcohol beverages. Copenhaver noted that Bowling been charged with driving under the influence on several occasions since 2004.

Bowling told the judge he hasn't taken a drink for the past six months.

"I currently do not use alcohol," said Bowling, a craft-beer aficionado who has a dog named Brewski.

Bowling was nationally known for his expertise in Internet marketing and Web site development. He also specialized in "on-line reputation management," which helps

companies and individuals push positive information about themselves to the top of a page following a Web search.

Bowling also developed a popular Web site called Zi.ma, which shortens Web address links or URLs. He frequently spoke about his work at national conferences.

He has more than 1,600 followers on Twitter.com, a social networking site.

After the hearing, Bowling left through the back door of the federal courthouse and could not be reached for comment.

He posted this on Twitter an hour after Tuesday's proceedings: "Court went as well as one could expect. Now time for noms [eating]. I'm starving."

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

June 14, 2010

4 convicted in Comar scandal face sentencing

By Eric Eyre

Staff writer



Bowling

CHARLESTON, W.Va. -- Convicted Cross Lanes computer executive Martin Bowling faces 25 to 31 months in prison under federal sentencing guidelines.

But Bowling's lawyer has asked a federal judge to keep Bowling out of jail -- and not force him to pay a fine or restitution.

Bowling and three others convicted in a state employment training grant scandal are scheduled to be sentenced at 1:30 p.m. today at the federal courthouse in Charleston.

In December, Bowling, former Comar Inc. CEO Al Hendershot, West Virginia State University extension agent Christine Gardner, and Workforce West Virginia grant manager Mary Jane Bowling, who is Bowling's mother, pleaded guilty to criminal charges in federal court.

The four admitted they took part in a scheme to embezzle grant money, then cover up the theft.

In a recent sentencing memo, federal public defender Mark French told U.S. District Judge John T. Copenhaver that Bowling has cooperated with the government, providing

"substantial assistance" to investigators and saving federal prosecutors the time and expense of seeking an indictment.

Bowling testified for more than two hours before a grand jury investigating the grant allegations.

"Mr. Bowling provided testimony to the government that enabled the government to expand its investigation into fraud with respect to Workforce West Virginia," wrote French, of Criswell & French.

French also argued that Bowling was being punished for the same crime twice -- as Bowling pleaded guilty in Kanawha Circuit Court in 2008 and spent a month at South-Central Regional Jail last March on a computer fraud charge.

In December, Bowling pleaded guilty to misappropriating government funds and aggravated identity theft. The second charge mirrors Bowling's 2008 conviction, French said.

Bowling is paying restitution on that case, and his ability to pay additional fines or restitution is "limited," according to French.

"Mr. Bowling has been, and has the future to be a strong, contributing member of society," French wrote.

French also submitted 26 letters from Bowling's friends, family and former co-workers, who asked the judge to keep Bowling out of jail.

They said Bowling regrets his actions and wants to make amends.

"He has suffered much already," wrote Luke Toney, a freelance writer. "His job is gone, as is his mother's, his house lost, his family has been scrutinized in the daily newspapers for months and months, their private lives exposed, his future jeopardized."

Bowling's supporters included several Internet marketing executives Bowling met at computer conferences throughout the U.S.

Bowling attended those conferences with grant funds that his mother illegally steered to Cross Lanes-based Comar, where he worked as chief technical officer.

"I believe Martin has much to offer and will benefit us all greatly, if he is allowed to remain a free man," wrote Todd Friesen, vice president at Position Technologies in Seattle.

Other letter writers were his wife, Mandi, father-in-law, Michael Felty, and WVSU official Thomas Toliver.

In December, Mary Jane Bowling admitted she advised her son what to include in a \$100,000 grant application Comar submitted to Workforce West Virginia, a state employment agency.

Mary Jane Bowling later forged a co-worker's signature on a grant evaluation form to ensure Comar received the grant. Bowling, who resigned from her Workforce West Virginia post amid the scandal last year, also admitted she encouraged her supervisor at Workforce West Virginia, Steve Dailey, to support Comar's grant application.

Dailey was scheduled to appear at Bowling's sentencing last month, but the hearing was postponed until today. It was unclear whether Dailey still planned to testify.

Workforce West Virginia started an audit of Comar's grant in March 2009 after the Charleston Gazette published a series of stories about Mary Jane Bowling's involvement.

Soon after, Mary Jane Bowling instructed Comar employees to place documents in a company file to substantiate the firm's request to use grant funds to attend training seminars. Bowling also asked Comar workers to alter credit card receipts to conceal grant reimbursements, according to her plea deal.

Despite the cover-up, auditors cited numerous "questioned costs," including \$10,000 in bogus consulting fees paid to Mary Jane Bowling's housemate, Christine Gardner, and Mandi Felty, Martin Bowling's girlfriend at the time.

Bowling told investigators that Felty did no work on the grant. Instead, Bowling received Felty's share as an employee bonus for helping secure the grant with his mother's help.

Hendershot, who now lives in Myrtle Beach, S.C., has admitted he diverted the funds.

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

N.C. WOMAN INDICTED IN \$2 MILLION AUDITOR SCAM MONEY SENT TO KENYAN BANKS, FEDS SAY

Publication: THE CHARLESTON GAZETTE
Published: Thursday, June 04, 2009
Byline: ANDREW CLEVINGER STAFF WRITER

A federal grand jury in Charleston has indicted a North Carolina woman in a conspiracy that defrauded the West Virginia Auditor's office of about \$2 million.

In an eight-page indictment unsealed Wednesday, federal prosecutors charged Angella Muthoni Chegge-Kraszeski, 33, of Raleigh, with obtaining a false South African passport in the name of Christina Ann Clay, then using the false identity to create four dummy corporations in North Carolina.

Two of the bogus businesses had names similar to entities doing business with West Virginia's government, including Deloitte Consulting Corp. and Unisys Corp., according to the indictment. The actual business names are Deloitte Consulting LLP and Unisys Corp.

Chegge-Kraszeski allegedly set up bank accounts under the similar but incorrect business names at TCF Bank in Minneapolis. Using those names, she then contacted West Virginia Auditor Glen Gainer's office and had the funds diverted to the Minnesota accounts, the indictment alleges.

Chegge-Kraszeski and co-conspirators known and unknown to the grand jury then began funneling money to banks in Nairobi, Kenya, according to the indictment.

Gainer's office discovered the missing money in the beginning of May. According to the indictment, the first payment of \$919,916 intended for Deloitte Consulting for services provided to the state Department of Health and Human Resources was misdirected on March 19.

Over the next six weeks, Chegge-Kraszeski and her accomplices allegedly steered 12 payments totaling \$913,373.52 to banks in Kenya, the indictment charges.

The indictment focuses only on the money diverted using the fake Deloitte account, said Assistant U.S. Attorney Booth Goodwin, head of the economic crimes section.

Chegge-Kraszeski was previously taken into custody on state charges and had her initial appearance in court in Raleigh earlier today, he said. U.S. Marshals are transporting her to West Virginia, where she will be arraigned on the current charges.

Goodwin declined to comment on whether others had been taken into custody or were facing additional charges.

The U.S. Secret Service and the West Virginia Commission on Special Investigations are handling the investigation, he said.

State Auditor Glen Gainer said he was "elated" at the fast response of the U.S. Attorney's Office and the U.S. Secret Services once the corporate identity theft was discovered.

"I'm very pleased that there has been at least one arrest in this case, and we look forward to others," he said.

Since the initial fraud was discovered, the state's payment process has been reviewed both internally and by an outside expert, he said.

"We are very diligently and carefully scrutinizing every electronic payment because of this," he said. "We are erring on the side of caution."

Since the fraud was uncovered locally, authorities have identified at least three other banking institutions, five corporations and nine other states besides West Virginia that may have been affected, Gainer said.

He declined to be more specific, saying investigators have asked him not to disclose any additional information.

According to a news release from the Florida Department of Financial Services, members of the North Carolina State Bureau of Investigation in arrested Chegge-Kraszeski mid-May for allegedly trying to defraud Florida with a similar scheme.

Using an alias, Chegge-Kraszeski allegedly tried to divert millions in state funds by pretending to be a legitimate state vendor, the release states.

Reach Andrew Clevenger at aclevenger@wvgazette.com or 304-348-1723.

THREE PLEAD GUILTY IN FRAUD SCHEME PLOT HATCHED IN KENYA COSTS WEST VIRGINIA GOVERNMENT \$2 MILLION

Publication: THE CHARLESTON GAZETTE
Published: Tuesday, May 25, 2010
Byline: ANDREW CLEVENGER STAFF WRITER

The final three Kenyan nationals charged in the international scam to defraud state governments out of millions of dollars entered guilty pleas in federal court Monday.

Michael M. "Mikie" Ochenga of Eau Claire, Wis., and Albert E. Gunga of Minneapolis pleaded guilty to conspiracy to commit money laundering. Robert M. "Robe" Otiso, of Elk River, Minn., pleaded guilty to aiding and abetting mail and wire fraud.

All three were involved in an international scheme designed to defraud states, including West Virginia, Massachusetts, Kansas and Ohio, by tricking them into sending electronic payments to dummy bank accounts set up with names closely resembling those of the real vendors.

Assistant U.S. Attorney Susan Robinson said during Monday's plea hearings that the plan originated in Kenya in late 2008.

That's when Angella Chegge-Kraszeski, a Kenyan woman who had settled in Raleigh, N.C., returned to Kenya, where co-conspirators had her take a photo used to make a fake South African passport under the name Christina Clay, Robinson said.

Chegge-Kraszeski was arrested and indicted in June 2009, one month after the West Virginia Auditor's office discovered that three payments totaling roughly \$2 million had not made it to their intended destinations.

A grand jury indicted Ochenga, Gunga, Otiso and two other Kenyan men - Paramena J. Shikanda and Collins A. Masese, both of Minneapolis - in November 2009. Shikanda and Masese have already admitted their roles in the scam.

Robinson said that Chegge-Kraszeski, who cooperated with investigators following her December 2009 plea, said that her handlers in Kenya originally intended for her to base the scheme in North Carolina, where many banks are headquartered.

Chegge-Kraszeski incorporated businesses with very similar names to real vendors for state agencies: Deloitte Consulting Corp. instead of Deloitte Consulting LLC, Unisys Corp. instead of Unisys Corp.

But when she tried to open bank accounts using the actual names, officials at Bank of America noticed that the name didn't match the articles of incorporation from the dummy firms, Robinson said. They also asked her for a second ID on top of the fake South African passport, which had been express-mailed from Dubai.

Her connections in Kenya, communicating largely via e-mail, put her in touch with Otiso in January 2009, referring to him as "our guy in Minnesota," Robinson said.

The men admitted they knew the funds funneled into new bank accounts at a TCF Bank branch in Minneapolis were the result of crimes, but maintained that they had no idea of the scope of scam.

Otiso said that he faxed invoices from non-existent firms in Nairobi provided by Chegge-Kraszeski to TCF, fabricated after the bank questioned why state agencies were transferring large amounts of money to an individual.

Otiso said he was ultimately paid \$3,500 for his role in the scam. Gunga said he was supposed to get \$15,000, while Ochenga put his intended cut closer to \$10,000.

While the ringleaders in Kenya could monitor the accounts over the Internet, they couldn't transfer funds, so Chegge-Kraszeski returned to Minnesota in late March 2009, after a payment of \$919,916 from West Virginia intended for Deloitte Consulting arrived in a fake account, Robinson said. With the help of her Minnesota co-conspirators, she initiated a flurry of transfers to various banks in Nairobi between March 26 and April 1, Robinson said.

She also gave cashiers' checks for roughly \$42,000 and \$27,000 to Gunga and Ochenga, respectively. Although he already had a personal bank account, Gunga used his check to open an account under the name Albert Gunga Landscaping on April 1, Robinson said.

By April 20, all the money had been drained from the account, she said.

Ochenga and Gunga face up to 20 years in prison when sentenced by U.S. District Judge John T. Copenhagen Jr. on August 26. Otiso, who is to be sentenced on August 19, faces up to 30 years.

Shikanda and Masese face up to 20 years, while Chegge-Kraszeski could spend up to five years in prison. All of the defendants could face deportation.

The U.S. Secret Service and the Internal Revenue Service spearheaded the investigation, with additional help from the U.S. Postal Service and U.S. Immigrations and Customs Enforcement.

In response to questioning from Copenhagen, Robinson said authorities had recovered more than \$120,000 from the diverted West Virginia payment, although more than \$700,000 remains unaccounted for.

While the scam also targeted large payments from the other states, no money was actually diverted from them, she said.

Ultimately, investigators were able to identify Chegge-Kraszeski from footage in a Sun Trust branch in Florida. After completing her business with a fake account, she can be seen on surveillance video using her own ATM card under her real name, Robinson said.

Reach Andrew Clevenger at aclevenger@wvgazette.com or 304-348-1723.

June 8, 2009

Former delegate indicted on racketeering charges

By **Andrew Clevenger**

Staff writer



Joe C. Ferrell is charged with bribing elected officials, including a former mayor of Logan and former Logan County sheriff, so that they would turn a blind eye to his illegal gambling enterprise, according to the 48-count indictment.
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CHARLESTON, W.Va. -- A former member of West Virginia's House of Delegates has been indicted by a federal grand jury on racketeering, gambling, obstruction and bribery charges for allegedly running illegal gambling rings in West Virginia and Kentucky.

Joe C. Ferrell is charged with bribing elected officials, including a former mayor of Logan and former Logan County sheriff, so that they would turn a blind eye to his illegal gambling enterprise, according to the 48-count indictment.

Ferrell, 62, of Chapmanville, is also accused of buying votes in Logan County during various campaigns and with bribing investigators with the West Virginia Lottery.

Ferrell became a major video machine owner in 1995, when he bought Southern Amusement Co. from the family of Senate President Earl Ray Tomblin. The company is also named in the indictment.

"Ferrell sought this position [in the House of Delegates] in order to protect the business of Southern Amusement by, among other things, influencing proposed and pending legislation regarding the operation of video lottery machines," the indictment states.

Ferrell, a Logan County Democrat who pleaded guilty in state court in 1992 to illegally funneling \$58,000 in cash to campaigns in Logan, Boone and Lincoln counties, was re-elected to the Legislature in 1998.

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 was entirely absent from the Legislature in 2006, reportedly for recurring back problems, but still collected his full legislative salary.

Ferrell could not be reached via a Chapmanville telephone listing under his name. A call to the lawyer who represented him in 2006 went unreturned.

In the indictment, returned last week and unsealed on Monday, federal prosecutors charge Ferrell with a host of crimes, largely centered on his alleged gambling operation. If convicted on all 48 counts, Ferrell faces hundreds of years in prison.

The indictment lists dates for 22 trips Ferrell or his associates allegedly took to collect profits from illegal gambling operations in Kentucky between January 2005 and March 2008.

Ferrell also conspired with the former mayor of Logan between 1995 and 2001, according to the indictment. The former mayor is not named, but Tom Esposito was mayor during that period.

Esposito cooperated with federal investigators during their probe of election fraud in Southern West Virginia. In 2004, the FBI planted Esposito as a sham candidate in a legislative race.

Esposito was placed on two years probation in January 2006 after pleading guilty to concealing a felony. His cooperation is credited with convictions of numerous other officials.

The former Logan mayor is described as "an unindicted co-conspirator and not as a defendant" in the indictment.

Ferrell allegedly bribed Esposito in March 1995 and March 1999. Ferrell also provided the then-mayor with trips to New Orleans in 1996 and Myrtle Beach in 2002, according to the indictment.

In 2000, Ferrell gave cash to the sheriff-elect of Logan County in exchange for a promise not to appoint a specific person as the new chief law enforcement deputy, the indictment alleges.

Johnny "Big John" Mendez, who was elected sheriff in 2000, is not named or charged in the indictment. In 2005, Mendez was placed on home confinement for conspiring to buy votes, having received leniency for cooperating with federal prosecutors.

The indictment also charges Ferrell with buying votes from at least five people between March 2000 and May 2004.

Ferrell allegedly had an investigator with the West Virginia Lottery on the payroll, whom he would pay to service Southern Amusement's machines after-hours and not report his activity to her superiors.

The investigator, who is named as "a co-schemer and aider and abettor but not as a defendant," gave Southern Amusement illegal access to the "sealed logic areas," the programming component that controls how the machines operate, according to the indictment.

Ferrell is also accused with helping an employee defraud the Social Security Administration by paying him in cash while he was collecting disability benefits. He also faces four counts of failing to collect, account for and pay employment taxes.

The investigation was a joint effort by the IRS, the FBI, West Virginia Legislature's Commission on Special Investigations, the Social Security Administration and the West Virginia State Police, the U.S. Attorney's Office said in a news release.

"I commend the U.S. Attorneys Office and all members of the investigative team in reaching this important phase of the investigation," said Timothy Marsh, acting special agent in charge of IRS criminal investigations.

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LOCAL BUSINESS OWNER MAN FACES FRAUD CHARGE CLARK A. DIEHL HUNG WALLPAPER IN STATE OFFICES

Publication: THE CHARLESTON GAZETTE
Published: Saturday, December 05, 2009
Byline: ANDREW CLEVINGER STAFF WRITER

The owner of a Charleston company that installed wallpaper in Gov. Joe Manchin's office and those of his chief deputies has been charged in federal court with committing mail fraud in an attempt to circumvent the state's competitive bidding requirements.

Clark A. Diehl, 63, owner of Wallpapers in Stock Inc., is charged with tax evasion and mail fraud in a two-count information filed Friday. An information, which cannot be filed without a defendant's permission, generally indicates that a defendant is cooperating with the government.

In 2005, Diehl provided and installed wallpaper and window treatments for the state without first providing a bid or estimate for the cost of the work, according to the information.

While the federal filing does not specify which state agency Diehl did work for, The Charleston Gazette reported in March 2006 that Manchin's office paid Diehl's company almost \$33,000 without bidding out the work.

Wallpapers in Stock submitted 15 separate invoices between September 2005 and December 2005, each below the \$10,000 threshold that triggers the requirement for a competitive bid. All together, the invoices totaled \$32,997, the Gazette reported, citing the state auditor's Web site.

According to the information, Diehl's company did the work in the summer and fall of 2005, and then he submitted three invoices from Wallpapers in Stock. After he learned that those invoices would not be paid because they were not in compliance with the state's competitive bidding regulations, Diehl devised a scheme to get paid anyway, the information says.

Diehl created and submitted four written bids from "two purported competing companies, for amounts of money greater than the amounts in the invoices he had already submitted, in order to make it falsely appear that the State of West Virginia had obtained the legally required competing bids and that Wallpapers in Stock had been the lowest responsible bidder," the information reads.

In 2006, then-Manchin spokeswoman Lara Ramsburg told the Gazette that the Governor's Office did not intentionally "string" the contract, or break a big project into smaller purchases, to avoid competitive bidding.

What started as a small project grew over time, and when the scope of the project became clear, Manchin's office bid out the job after consulting with the state Purchasing Division, Ramsburg said at the time.

In December 2005, the Governor's Office accepted bids on roughly \$30,000 of new work, including window treatments for Manchin's private office, chief of staff Larry Puccio's office, two assistants' offices and the Governor's Reception Room.

The work was bid out by staff members in Manchin's office, although contracts over \$10,000 are required to be bid out by the state Purchasing Division.

Wallpapers in Stock won all three bids, beating out Ford Design Service, a company reportedly owned by Diehl's brother-in-law, Larry Ford, the Gazette reported in 2006.

When the Gazette called Ford Design Service at the time, Diehl answered the phone. "This is their phone and I just happened to be talking to them," Diehl said. He denied colluding with the other company to rig their bids.

In April 2006, Diehl was mailed a financial document in the amount of \$29,732.07, according to the information.

Reached on Friday, Manchin spokesman Matt Turner said he was unaware of the charges against Diehl.

"This is the first I've heard about this. There's not much I can offer," said Turner, who was not Manchin's spokesman at the time of the work.

On Tuesday, Puccio announced that he would leave as Manchin's chief of staff at the end of the month. Turner said Puccio's resignation has nothing to do with the charges filed against Diehl.

"Absolutely not," he said. "He wants to get more time back with his family, and that's what he's going to do. He's been doing this for a while, and he wants to get back to the private sector and his family."

When Manchin was secretary of state, he paid Wallpapers in Stock another \$15,774 from November 2001 to January 2002, the Gazette reported in 2006.

Premiere Liquor, a company incorporated by Diehl in December 2005, sold liquor to the Governor's Mansion. In April 2006, the company changed its name and changed managers, from Diehl to Charles P. Winkler, according to the secretary of state's Web site. Premiere Liquor is not mentioned in the information filed Friday.

The information also charges Diehl with income tax evasion, for allegedly underreporting his 2002 income by more than \$60,000. Instead of the \$408 in taxes he paid, he owed about \$19,000, the information alleges.

Reach Andrew Clevenger at aclevenger@wvgazette.com or 304-348-1723.

FEDERAL FRAUD CASE CONTRACTOR PLEADS GUILTY CLARK A. DIEHL ADMITS FALSIFYING BIDS TO STATE

Publication: THE CHARLESTON GAZETTE
Published: Saturday, January 16, 2010
Byline: ANDREW CLEVINGER STAFF WRITER

The owner of a Charleston company that installed window treatments in Gov. Joe Manchin's office and those of his chief deputies admitted Friday in federal court that he performed work for the state in 2005 without previously submitting a bid or estimate.

Clark A. Diehl, 63, owner of Wallpapers in Stock Inc., pleaded guilty to one count of tax evasion and one count of mail fraud. He faces up to 25 years in prison when sentenced by U.S. District Judge John T. Copenhaver Jr. on May 19.

Diehl said that the work had already been completed in 2005 when he submitted invoices to the state. Upon learning that the invoices violated state law that requires competitive bidding, he submitted phony bids from at least two other entities to make it look as though Wallpaper in Stock was the lowest bidder, he said.

"I provided the services and work to the state of West Virginia, and at the time I discovered I wasn't going to get paid, I falsified documents to get paid," he said.

When the state finally did pay Diehl \$29,732.07 for the project, it sent the money directly to the State Tax Department to be put toward Diehl's pre-existing tax debts, an arrangement that Diehl had approved, Assistant U.S. Attorney Hunter Smith said.

Diehl also admitted that he underreported his income for 2002 by using his company's money to pay for his personal bills. He claimed he earned \$32,651 and paid \$408 in taxes when he actually earned around \$96,000 and owed \$19,000.

State records indicate that Wallpapers in Stock worked on the Governor's Office and its reception area, then-chief of staff Larry Puccio's office and two additional offices.

Neither Diehl nor Smith gave any indication of who hired Wallpapers in Stock or approved the work, which took place in summer and fall of 2005, according to court documents.

In an e-mail on Friday, Manchin spokesman Matt Turner wrote: "The window treatments in the Governor's Office were handled by an office staffer. The work started out small and then grew over time. When the Governor's Office realized there was an issue with the installation, the office consulted with the Purchasing Division and the Purchasing Division approved the purchase order after appropriate steps were taken."

Unanswered questions

Diehl's testimony under oath that he completed the work first, then created fake bids in order to get paid, appears to contradict documents provided by the state to the Gazette-Mail in response to a Freedom of Information Act request.

In a memo dated Jan. 30, 2006, Missy Phalen, assistant to first lady Gayle Manchin, wrote that she had three bids before the work started.

"After the design for the Governor's private office and cabinet room was determined, I received written bids from three vendors and I awarded the contract to the lowest bidder, which was Wallpapers in Stock," Phalen wrote. "Wallpapers in Stock installed the drapery in November 2005."

At that point, it was decided that additional suites of offices also would get new window treatments, and Phalen got three more bids after the designs were approved, the memo states.

As design work on the additional offices was being done, the governor's reception room was added to the project, according to the memo.

"As before, once the design was approved, I received three written bids and awarded the contract to the lowest responsible bidder," Phalen wrote.

In response to the Gazette-Mail's FOIA request for documentation related to any contract awarded to Wallpapers in Stock, the state provided four quotes each from two firms, Distinctive Outlets and Ford Design Service. These include bids relating to Manchin's office, Puccio's office, two additional offices and the governor's reception area. Ford Design Service was purportedly owned by Diehl's brother-in-law, Larry Ford, The Charleston Gazette reported in 2006.

The state also provided nine invoices from Wallpaper in Stock.

The bids relating to Manchin's office are dated Oct. 15, 2005 (Distinctive Accents), and Oct. 30, 2005 (Ford Design). Days later, on Nov. 8, 2008, Diehl submitted three invoices for materials for and work performed on the Governor's Office.

Diehl's three Nov. 8 invoices total \$10,245.41, making it appear that he was "stringing" his invoices, or submitting several smaller invoices rather than one big one, in an attempt to stay under \$10,000, the amount that required competitive bidding at the time. (In 2006, the Legislature increased the limit from \$10,000 to \$25,000.)

The remaining bids for the other offices and reception area are either dated Dec. 6, 2005 (Ford Design), or Dec. 9, 2005 (Distinctive Accents). The corresponding invoices from Wallpapers in Stock are all dated Dec. 5, 2005, suggesting that the other firms were bidding on work that had already been completed.

Diehl pleaded guilty via an information, which generally indicates that a defendant is cooperating with the government. As part of his plea deal, Diehl agreed to provide additional information to the government as requested.

Court documents indicate that Diehl and his attorney, Ben Bailey, were negotiating a deal with prosecutors in November 2009. He was formally charged the following month.

However, prosecutions in federal tax cases require approval from the U.S. Department of Justice's Tax Division. Bruce M. Salad, that office's chief of the Southern Criminal Enforcement Section, signed off on the case in December 2007, meaning that Diehl has been under investigation for more than two years.

Gary Restaino, a trial lawyer with the Department of Justice in Washington, D.C., joined Smith at the prosecution table during Friday's plea, another possible indication that the case against Diehl has larger ramifications.

Staff writer Alison Knezevich contributed to this report. Reach Andrew Clevenger at aclevenger@wvgazette.com or 304-348-1723.

Newspaper Bluefield Daily Telegraph

Date Wednesday, February 10, 2010



5 indicted in Sanitary Board investigation

By GREG JORDAN
Bluefield Daily Telegraph

February 10, 2010 07:12 pm

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PRINCETON – Five men have been indicted on charges stemming from an investigation into activities at the Bluefield Sanitary Board.

Mercer County Prosecuting Attorney Timm Boggess said the five men were among the indictments issued Wednesday by the February 2010 session of the Mercer County Grand Jury. They included Robert Terry Honaker, fraudulent scheme, obtaining money by false pretenses; Steven Burkhardt Sr., fraudulent scheme, falsifying accounts; Joseph Anthony Nunn, fraudulent scheme; Dewayne Houk, embezzlement; and Kirk Anthony Simpkins, obtaining money by false pretenses. The ages and addresses of each person were not available late Wednesday.

“All (indictments) are from situations occurring from an investigation of wrongdoing at the Bluefield Sanitary Board,” Boggess said.

Bluefield City Manager Andy Merriman, who is also chairman of the Bluefield Sanitary Board, said Houk was still an employee of the board, and that Honaker and Burkhardt were former employees. He said he was unfamiliar with the other two names.

Honaker is a former executive director of the sanitary board. His position was terminated in January 2007. Merriman said the case had been the subject of a complex investigation “involving law enforcement agencies at one level or another.”

“It’s been a tough one for those investigators, but they’ve done a phenomenal job,” he said.

The current sanitary board has been working to fix problems caused by years of neglect, he said.

“Money there to fix all of this was pilfered in one way or another over the years,” Merriman said. “It’s a good thing this is being addressed.”

— Contact Greg Jordan at gjordan@bdtonline.com

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April 29, 2010

Legislature's special investigations unit agrees to look into State Police Academy allegations

By Gary A. Harki

Staff writer

CHARLESTON, W.Va. -- The Kanawha County prosecutor's office has asked for a third separate investigation into allegations that a student was beaten while unconscious during a training session at the State Police Academy.

Kanawha County Assistant Prosecutor Dan Holstein said he contacted the Legislature's Commission on Special Investigations, which agreed to investigate the April 5 incident.

"The first we became aware of it was when it was in the paper, but since that time we've been talking with a couple of different agencies about who would be the best to investigate it," Holstein said.

Princeton officer Christopher Winkler and his family say two academy trainers beat him during baton training. Winkler's mother Pamela McPeak said an instructor told her he saved her son's life when he pulled two other trainers off of Winkler after they continued to beat him while he was unconscious.

On Tuesday, Gov. Joe Manchin called for an independent panel to investigate what happened. Also Tuesday, State Police Superintendent Col. Timothy S. Pack issued a statement saying an initial investigation by State Police shows that Winkler didn't receive any direct hits to the head or neck. In the statement, Pack said the training was immediately halted when it became apparent that Winkler was in distress.

"We need to have someone independent, even of the executive branch of state government, come in," Holstein said. "From our perspective we need to have this looked at by someone independent so that the public has confidence in the results."

Gary Slater, director of the legislature's special investigation commission, said he couldn't comment on whether there was an investigation.

Slater and several other investigators with the commission are ex-state troopers. Slater has been with the commission for more than 17 years. In the early 1990s he worked on the case of former West Virginia State Police chemist Fred Zain, whose 10 years of false testimony wrongfully convicted countless defendants and cost the state millions of dollars in payments to those defendants.

On Thursday, State Police spokesman Michael Baylous reiterated that the State Police would accept an outside investigation into what happened.

"We're not opposed to whatever the Governor's office determines is appropriate in this situation," he said.

Holstein said the investigations' results would dictate what happens next, including whether someone would be prosecuted criminally.

"Whatever it points out, maybe it'll go that way," he said. "I don't know. Maybe it will just be something to help formulate better policy."

Any citizen can ask for an investigation by the Legislature's commission, said Ramie Barker, chief of staff for state Senate President Earl Ray Tomblin, D-Logan.

By law the commission can't talk about investigations, including whether or not something is being investigated, he said.

"If they have any findings, then they share them with the proper authorities, then they are made public," Barker said.

In his press release on Tuesday, Pack addressed the incident for the first time -- two weeks after Winkler was initially injured and three days after a Gazette-Mail report detailing Winkler's account.

He said an internal inquiry by the State Police had shown that Winkler was neither abused nor mistreated and that several academy staff members and basic officers in attendance had been interviewed.

According to Winkler, only he and staff members were in the room during the training.

Pack also said that the existence of clear and convincing medical evidence that Winkler's condition was a direct result of training hadn't been produced.

But medical records provided to the Gazette by the Winkler family shows a diagram of Winkler's injuries to the neck. The "Emergency Physician Record" from Thomas Memorial Hospital states that Winkler received a head injury during training at the police academy. The "context" on the form is listed as "direct blow," the severity as "moderate" and the associated symptoms as "lost consciousness."

Reach Gary Harki at gha...@wvgazette.com or 304-348-5163.

November 8, 2010

Prosecutor: No charges in police academy incident

By Gary A. Harki

CHARLESTON, W.Va. -- Kanawha County prosecutor Mark Plants will not press charges against the police instructors involved in the April training incident that left Princeton Police Officer Christopher Winkler with a blood clot in his brain.

The decision comes after prosecutors reviewed the independent investigation report by the West Virginia Commission on Special Investigations.

On April 5, Winkler participated in required multiple assailant training where two instructors acted as assailants. Two troopers -- C.R. Holbert and J.M. Comer -- and Cpl. Michael McConihay from the Charleston Police Department were involved in the training.

In May, Plants requested that the commission investigate the incident.

None of the witnesses involved in the investigation told the commission that they saw Winkler struck after he went down, said Dan Holstein, Kanawha County assistant prosecutor.

A doctor involved with treating Winkler also said that Winkler's injuries were consistent with that type of training, Holstein said.

"There was never a doubt in my mind that there was no wrongdoing on our part," said Maj. Mark DeBoard, commandant of the West Virginia State Police Academy. "I've

maintained from the very beginning that the staff of the State Police Academy acted with 100 percent integrity."

Plants provided a redacted copy of the report to the Gazette on Monday.

Plants said his policy is to review investigative reports, then return them to the agency that produced them, so they can be released to the public. He said he made an exception in this case because by law the Commission on Special Investigations can't release their reports.

Commission Investigator Carl Hammons, who retired as a detective from Charleston Police, prepared the report.

Winkler received the blood clot during the multiple assailant training and not during previous boxing training or because of a pre-existing condition, according to Holstein.

Winkler's mother, Pamela McPeak told the Gazette that an instructor told her in the hospital after her son was injured that he saved Winkler's life by pulling two other instructors off Winkler when they continued to beat him while he was unconscious.

In her interview with Hammons, she said the statement was made by the officer to Winkler's father. Winkler's father, Paul Winkler, also told investigators that that is what he was told by an unidentified officer.

The doctor who was allegedly present at the time, Dr. Richard Coulon, did not hear the officer say he had pulled anyone off of Winkler, Holstein said.

Winkler, who has since finished his certification at the academy, said he didn't expect them to find any malicious intent.

"It's the state investigating the state. I didn't expect much from them," he said. "I don't know what happened to me. I know the pain was a lot more severe when I came to."

DeBoard said the multiple assailant training continues to be a part of training at the academy. He said the instruction process is always under review but that no changes were made specifically because of what happened to Winkler.

Four people were hurt in the most recent round of multiple assailant training, all instructors, DeBoard said.

"A lot of times instructors come out on the short end of the stick," he said.

DeBoard participated in the training himself during the last class. A student hit him in the back and compressed some of his vertebrae. He's been seeing a chiropractor.

"We still stand by the training. It's good, realistic and necessary training," he said.

Reach Gary Harki at gha...@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. (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.