

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

In the matter of:
Verified Complaint No. 2008-07

STATEMENT OF CHARGES AND NOTICE OF HEARING

The members of the Probable Cause Review Board of the West Virginia Ethics Commission, by unanimous vote of those present, entered an Order dated February 18, 2009 finding probable cause to believe that the Respondent violated W. Va. Code § 6B-2-5, and directing the preparation of this Statement of Charges.

The members of the Probable Cause Review Board charge that within two years before the filing of the complaint in this matter, Eugene McKenzie, as the elected Mayor of the Town of Rainelle, did knowingly and intentionally use his office for his own private gain and/or for the private gain of another. It is hereby charged that Respondent McKenzie violated the Ethics Act as follows.

COUNT I

1. Eugene McKenzie was the elected Mayor of Rainelle, West Virginia at all times herein.
2. In 2006, Eugene McKenzie and/or his son(s) owned real property located on Main Street, Rainelle, West Virginia, commonly referred as the "Old Heilig Myers" Building.
3. Business owners are required to maintain and replace the sidewalk in front of their respective businesses according to Rainelle Town ordinance.
4. Beginning on an unknown date and continuing to on or about October 31, 2006, defendant Eugene McKenzie knowingly and intentionally used:
 - (a) Town equipment, including but not limited to the Town's jackhammer, skid steer, dump truck, and concrete tools; and

- (b) Town workers, including but not limited to Tommy R. Keeney, Jr., Shane Altizer, David Currence, and John Hill to replace a sidewalk.
5. Upon information and belief, as a result of this work, the subject property value improved.
 6. Town Council did not authorize the use of Town workers to perform the sidewalk repair or the use of the Town's equipment therein.
 7. Mr. McKenzie never reimbursed the Town for the cost of the Town workers' labor or for the value of the use of the Town's equipment.
 8. The acts summarized in paragraphs 1-7 constitute a violation of W.Va. Code § 6B-2-5(b).

COUNT II

9. Paragraph 1 is incorporated herein by reference.
10. Eugene McKenzie also owns real property located at the corner of Chestnut Street and Nicholas Avenue in Rainelle, West Virginia.
11. Eugene McKenzie owns a construction company named McKenzie Specialty Company.
12. Beginning on or about June 2006, a business called Plaza Management performed work pursuant to a private contract at the former Foodland property located on Chestnut Street and Route 60 in Rainelle, West Virginia, which included demolition of the building and considerable excavation.
13. On June 26, 2006, Plaza Management, represented by Danny Milam, advised Town Council of the need to relocate a storm drain pipe on Chestnut Street. He advised that Plaza Management would do the work, and replace any of the Town's sidewalks damaged in the process.
14. Subsequently, Plaza Management contracted with McKenzie Specialty Company to excavate and perform other work related to the former Foodland site.
15. Beginning on an unknown date, defendant Eugene McKenzie knowingly and intentionally used, for the benefit of McKenzie Specialty Company:

- (a) Town equipment, including but not limited to the Town's concrete saw, skid steer, dump truck, and asphalt roller; and
- (b) Town workers, including but not limited to Tommy Keeney, Jr., Shane Altizer, Tommy Lewis, and Ray Everson.
16. A storm drain pipe was relocated to McKenzie's property located on the corner of Chestnut Street and Nicholas Avenue. Further, fill dirt from the excavation was relocated to fill in a ravine and fill around the catch basin on McKenzie's property.
17. Upon information and belief, as a result of the work done on the Chestnut Street drain project, McKenzie's property value improved.
18. Town Council did not authorize the use of Town workers to perform the drain relocation project.
19. Mr. McKenzie never reimbursed the Town for the cost of the Town workers' labor or for the value of the use of the Town's equipment.
20. McKenzie Specialty Inc. realized financial gain as a result of the work performed by the Town's workers and the use of the Town's equipment.
21. The acts summarized in paragraphs 9-20 constitute a violation of W.Va. Code § 6B-2-5(b).

COUNT III

22. Paragraph 1 is incorporated herein by reference.
23. Rollin Nutter, an employee of McKenzie Specialty Company, worked on various jobs at Rainelle Town Hall. The Town of Rainelle issued a paycheck to Nutter for the period of 1/8/07-1/14/07. Respondent McKenzie signed the paycheck issued by the Town of Rainelle to Mr. Nutter.
24. McKenzie Specialty Company billed the Town for Mr. Nutter's work for the period of 1/8/07-1/15/07. Subsequently, the Town issued a vendor's check to McKenzie Specialty Company for Mr. Nutter's work. Hence, Respondent was reimbursed for an expense he never incurred and thereby received a financial benefit.
25. McKenzie Specialty Company never reimbursed the Town for the overpayment for Mr. Nutter's wages.

26. As a result of placing Mr. Nutter on the Town's payroll during slow times at McKenzie Specialty, Respondent was able to retain a valuable employee of his private company at no cost.
27. Town Council never authorized the hiring of Mr. Nutter or contracting with McKenzie Specialty Company to provide labor to the Town.
28. The acts summarized in paragraphs 22-27 constitute a violation of W.Va. Code § 6B-2-5(b).

COUNT IV

29. Paragraphs 22-27 are incorporated herein by reference.
30. The acts summarized in paragraphs 22-27 constitute a violation of W.Va. Code § 6B-2-5(d).

COUNT V

31. Paragraph 1 is incorporated herein by reference.
32. Beginning on an unknown date and continuing to on or about June 2007, when McKenzie lost his bid for re-election, Eugene McKenzie did knowingly and intentionally direct Town police to target political and/or personal opponents for harassment and arrest.
33. Upon information or belief, McKenzie directed J.P. Stevens, Town of Rainelle Chief of Police, to harass, stop, and attempt to arrest Randy Pendleton without cause.
34. Upon information or belief, McKenzie directed Eleanor Cooper, Town of Rainelle Police Sergeant, to harass and attempt to arrest without cause
 - i. Randy Pendleton,
 - ii. John Fox,
 - iii. Wayne Neal, and
 - iv. David Taylor.
35. Upon information and belief, beginning on or about July 1, 2006 until on or about September 1, 2006, McKenzie directed Shannon Willey, Town of Rainelle Police Officer, to harass political enemies without cause.
36. The acts summarized in paragraphs 31-35 constitute a violation of W.Va. Code § 6B-2-5(b).

NOTICE OF HEARING

You are hereby notified that on or before May 18, 2009 at a specific date and time to be determined, a hearing will be held to determine the truth or falsity of the charges against you contained in the foregoing Statement of Charges.

Pursuant to the direction of the Commission, an assigned hearing examiner employed by the Commission will preside at the hearing. The record compiled by the hearing examiner will then be submitted to the members of the Ethics Commission who will make a final decision in this case.



Theresa M. Kirk
Executive Director

2-25-2009

Date