BEFORE THE WEST VIRGINIA ETHICS COMMISSION

In Re:

PAULA BOGGS **COMPLAINT NO. VCRB 2012-12**

FINAL DECISION AND ORDER

This proceeding arises under the West Virginia Governmental Ethics Act, W. Va. Code § 6B-2-1 et seq. ("Ethics Act"). The Ethics Commission is the duly authorized state agency to enforce the Ethics Act and conduct hearings pursuant to the provisions of W. Va. Code § 6B-2-4.

Complainant Ray Hall filed a Verified Complaint against Respondent Paula Boggs, a member of the City of Piedmont Council, on February 7, 2012, alleging that she had violated the Ethics Act. The Ethics Commission's Probable Cause Review Board, following an investigation, entered an Order on April 24, 2015, finding probable cause to believe that Respondent Paula Boggs ("Respondent" or "Boggs") violated W. Va. Code § 6B-2-5(b) and ordering that a Statement of Charges be prepared and that a public hearing be scheduled. A Statement of Charges and Notice of Hearing was issued on April 24, 2015.

On April 29, 2015, the Ethics Commission learned that Respondent Boggs was on the ballot for council in the May 11, 2015, City of Piedmont election. The Ethics Commission then issued a Stay of Proceedings and rescinded the Statement of Charges and Notice of Hearing on April 29, 2015, pursuant to W. Va. Code § 6B-2-3a(c), which provides that the Ethics Commission shall stay proceedings in complaints against candidates at least 60 days before an election. However, Respondent Boggs waived the stay on May 4 and asked that her hearing be consolidated with the hearing for Grace Russell, the Respondent in VCRB 2012-13. That was done and the consolidated hearing was held in Charleston, West Virginia, on July 23, 2015.

H.F. Salsbery presided at the hearing as the independent Hearing Examiner. Ethics Commission General Counsel Kimberly B. Weber served as prosecutor. Respondent Boggs was not represented by counsel. At the hearing, Ms. Weber presented as witnesses Complainant Hall, Freda Fisher and Bob Fike and introduced 21 exhibits and a CD recording of the December 30, 2011, Piedmont City Council meeting into the record. Respondent Boggs presented testimony on her own behalf and introduced two exhibits into the record.

A certified court reporter created a stenographic record of the hearing and a transcript of the proceedings. Subsequent to the hearing, the Commission and Respondent Boggs each timely submitted proposed Findings of Fact and Conclusions of Law. The Hearing Examiner submitted (recommended) Findings of Fact and Conclusions of Law on August 20, 2015. The Commission was provided with the hearing transcript, all exhibits and the Hearing Examiner's recommended Findings of Fact and Conclusions of Law ["Hearing Examiner's Recommendations"] on or about September 24, 2015.

At the Commission's regular meeting on October 1, 2015, where a quorum of the Commission was present and voting, the Commission thoroughly considered the record and the Hearing Examiner's Recommendations and reached its decision. Commissioner Jack Buckalew presided.

The Hearing Examiner's Recommendations are attached hereto and are incorporated herein by reference with the following exceptions, additions and/or modifications:

PRELIMINARY MATTERS

The Commission adopts the section of the Hearing Examiner's Recommendations entitled "Preliminary Matters."

FINDINGS OF FACT

The Commission adopts each of the 16 "Findings of Fact" set forth in the Hearing Examiner's Recommendations with the following exceptions, additions and/or modifications:

1. In Findings of Fact No. 3, "Transcript, page 78" is modified to "Transcript, pp. 31-36, 45, 60-62, 70, 78, 81-82 and 85."
2. In Findings of Fact No. 4, "Transcript, generally" is modified to "Transcript, pp. 47-49, 58-59 and 62."
3. In Findings of Fact No. 5, "Transcript, generally" is modified to "Transcript, pp. 44, 58-107."
4. In Findings of Fact No. 7, "Transcript, pages 89, 97 and 98" is modified to "Transcript, pp. 88-93, 97 and 98."
5. In Findings of Fact No. 8, "Transcript, page 94" is modified to "Transcript, pp. 94 and 107."
6. Finding of Fact No. 9 is modified to: "Council voted to move from executive session and returned to regular session, where it voted to retain Mr. Carskadon to represent the City. Transcript, pp. 107-08."
7. Finding of Fact No. 13 is modified to: "A vote was then taken on the motion that the City retain a lawyer for John Shingler, and Respondent Russell voted 'aye.' Transcript, pp. 121-22. No vote was recorded on the

tape for Respondent Boggs, but she did not dispute during the July 23, 2015, hearing that she voted in favor of the motion. Complainant's Exhibit 13."

8. Finding of Fact No. 14 is not adopted.

CONCLUSIONS OF LAW

The Commission adopts the Hearing Examiner's recommended "Conclusion [sic] of Law" numbered 17, 18, 19 and 20, but does not adopt "Conclusion of Law" numbered 21.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the West Virginia Ethics Commission ORDERS the following sanctions against Respondent Paula Boggs:

1. A public reprimand shall be issued against Respondent Paula Boggs;
2. Respondent Paula Boggs shall personally pay a fine of $1,000 to the West Virginia Ethics Commission on or before December 1, 2015;
3. Respondent Paula Boggs shall personally reimburse the West Virginia Ethics Commission the amount of $1,310.45 for the actual costs of prosecuting her violation of the Ethics Act on or before December 31, 2015;
4. Respondent Paula Boggs shall complete training on the West Virginia Ethics Act, either in person or by viewing the training provided on the Ethics Commission's website, *www.ethics.wv.gov*, on or before December 1, 2015. Respondent Boggs shall notify the Commission in writing upon completion of this training.

This Order was entered on the 1st day of October, 2015.

Jack Buckalew, Acting Chairperson
West Virginia Ethics Commission

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

RAY HALL,

Petitioner,

v. Complaints Nos. VCRB 2012-12 and 2012-13

PAULA BOGGS AND
GRACE RUSSELL,

Respondents.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Preliminary Matters

A hearing on these two Complaints was held on July 23, 2015, at the offices of the West Virginia Ethics Commission, 210 Brooks Street, Charleston, West Virginia. The Respondents, Paula Boggs and Grace Russell, appeared in person but without counsel. Because the Respondents were not represented, the undersigned first cautioned them as to the possible penalties which the Commission could impose should the Respondents, or either of them, be found to have violated West Virginia Code (WVC) 6B-2-5(b), the only violation with which they were charged. Transcript, pages 5-6.

The Respondents raised, as an initial matter and in what the undersigned considered as a motion, the issue as to whether or not the Complaints were barred by the applicable statute of limitations, West Virginia Code (WVC) 6B-1-1, *et seq.* The undersigned finds that the two-year statute of limitations, WVC 6B-2-4(w), only requires that the *complaint* be filed within two years of the alleged violation. It does not require that a hearing be held within that two year window. Here, the alleged violation occurred on December 30, 2011, and the Complaints were filed on February 7, 2012. See Exhibit 1, hereto. Therefore, the statute of limitations was satisfied and Respondents' motion is DENIED.

I. Findings of Fact

The undersigned, as Hearing Examiner, makes the following Findings of Fact based on the record of the hearing conducted pursuant to notice on July 23, 2015, and the exhibits admitted during the course of that hearing. All of the following findings were either admitted or were undisputed unless otherwise noted:[1]

1. Respondents Paula Boggs (Ms. Boggs) and Grace Russell (Ms. Russell) were elected members of the City Council of the City of Piedmont, West Virginia, (the City) and held that position at all times relevant to these proceedings.

2. A Special Meeting (the Special Meeting) of the City Council for the City of Piedmont (the Council) was held on December 30, 2011, ". . . to discuss the ongoing investigation concerning the Federal Emergency Management Agency trailers." Complainant's Exhibit 13.

3. At the time of the special meeting, the State Police and other agencies were investigating whether the City's Foreman, John Shingler (Mr. Shingler), and possibly others used his or their position(s) to obtain Federal Emergency Management Administration (FEMA) surplus trailers utilizing the City of Piedmont as a conduit by which the trailers could be improperly and/or illegally obtained. Transcript, page 78.

4. Present at the meeting were the Respondents, Ms. Boggs and Ms. Russell, both of whom were Members of Council as well as Members of Council, Bob Fike, Ray Hall, Freda Fisher who appeared by telephone, City Clerk Betsy Rice, City Foreman John Shingler, Mayor Lester Clifford and an attorney, James Carskadon, who had from time to time represented the City in the past. Transcript, generally.

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[1] Because the December 30, 2011, meeting where the alleged violation took place was taped and because the conversations on the tape admitted without objection, much of what took place at the December 30th meeting is uncontroverted.

5. The meeting began in open session and subsequently moved to executive session and a discussion was had regarding retaining Attorney Carskadon to represent the City in the matter of the investigation concerning the FEMA trailers and the involvement of the City, Mr. Shingler and perhaps others. Transcript, generally.

6. Mr. Carskadon also advised Mr. Shingler to retain counsel, and, in fact, required it. Transcript, page 72.

7. Attorney Carskadon was also asked if he could represent Mr. Shingler as well, and he opined that he could only represent Mr. Shingler if he, Mr. Shingler, had acted within the scope of his employment otherwise he, Mr. Shingler, would need separate counsel. Transcript, pages 89, 97 and 98.

8. Mr. Shingler asked that the City of Piedmont pay for separate legal counsel to represent him should he be found to have acted outside the scope of his employment. Transcript, page 94.

9. After a lengthy discussion, Mr. Carskadon was retained to represent the City. Transcript, page 108.

10. Respondent Boggs then made a motion that the City retain a lawyer for Mr. Shingler. Transcript, page 110. Respondent Russell seconded the motion. Transcript, page 110.

11. A discussion was held concerning the propriety of the City of Piedmont retaining counsel for Mr. Shingler under the circumstances that had been described, e.g. his personal conduct. Transcript, pages 111-113. Ultimately, a question was posed by one of the members of council to Mr. Carskadon who apparently attended the meeting during the entire discussion, "Before I vote, I'd like to ask our newly appointed City Attorney: Do you see any ethics or conflict issues with the City paying for any individuals involved in this." Transcript, page 113. Attorney Carskadon, after delivering a lecture regarding this situation, offered to research the issue. Transcript, pages 115-

116. However, Respondent Boggs interjected, "I'm not comfortable letting John (Shingler) hang there while you do that." Transcript, page 116.

12. Attorney Carskadon asked the rhetorical question whether the City would pay the attorney fees for the other people under investigation. Transcript, page 119. Both Respondents responded, "No." Transcript, page 119.

13. A vote was then taken and Respondent Russell voted "aye". Transcript, page 122. No vote was recorded on the tape for Respondent Boggs but she did not dispute that she voted for her motion during the July 23, 2015, hearing. Transcript, generally.

14. After adjourning the executive session, the public portion of the meeting resumed. Respondent Boggs made a motion which Respondent Russell seconded, consistent with the motion she made during the executive session, i.e. that the City pay a retainer of not more than $10,000 for a lawyer, other than Mr. Carskadon, to represent Mr. Shinger. Complainant's Exhibit 13. The motion passed by the same vote as had been had in executive session, i.e. 2-1, with Respondents Boggs and Russell voting "yes." Complainant's Exhibit 13.

15. Mr. Shingler retained counsel for his personal defense and the City of Piedmont paid his counsel $10,000 on Mr. Shingler's behalf. Complainant's Exhibits 16 and 17. [2]

16. Neither Respondent disputed evidence adduced at the July 23, 2015, hearing that they, along with others, knew that Mr. Shingler was under investigation at the time of the December 30, 2011, council meeting. Transcript, pages 21 and 166.

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[2] Mr. Shingler ultimately pled guilty to a charge of Conversion of Government Property. Complainant Exhibit 19.

II. Conclusion of law

17. Respondents were elected public officials at all times relevant to the Complaint and Statement of Charges, and, therefore, are subject to the provisions of the West Virginia Government Ethics Act (the Ethics Act), West Virginia Code (WVC) 6B-1-1, *et seq.*

18. At the time of their actions, Respondents knew that Mr. Shingler was under investigation for alleged criminal violations.

19. Respondents, by their actions in moving, seconding and voting for the expenditure of public funds for the defense of an individual's personal actions misused their public positions in violation of WVC 6B-2-5(b).

20. The Complainant proved beyond a reasonable doubt the allegations in the Statement of Charges that Respondents used public monies, in excess of a *de minimus* amount, for the personal gain of Mr. Shingler, and, therefore, violated the provisions of WVC 6B-2-5(b).

21. WVC 6B-2-4(r) authorizes the West Virginia Ethics Commission to impose sanctions against the Respondents, and the undersigned recommends the following sanctions as to each:
    a. That the Respondents be publically reprimanded; and
    b. That the Respondents pay the costs of this action not to exceed $1,500 each; and
    c. That the Respondents, if they or either of them are still in office at the time the Commission issues its opinion herein or prior to Respondents, or either of them, again holding public office, be required to take and complete such training as the Ethics Commission may require, e.g. the video on the Ethics Commission's website, www.ethics.wv.gov., and

notify the Commission in writing and under oath that Respondent(s) completed the required training.[3]

Respectfully submitted this 20th day of August, 2015

H. F. Salsbery, Hearing Examiner

[3] It is the opinion of the undersigned that if the City of Piedmont desires reimbursement from the Respondents for the $10,000 paid for Mr. Shingler's defense then the City should pursue that with Respondents.

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

In Re:

PAULA BOGGS **COMPLAINT NO. VCRB 2012-12**

CERTIFICATE OF SERVICE

I, Rebecca L. Stepto, Executive Director of the West Virginia Ethics Commission, certify that I mailed a true and complete copy of the foregoing **FINAL DECISION AND ORDER** via Certified Mail, Return Receipt Requested, and via first-class, United States mail, postage prepaid, on October 1, 2015, upon:

Paula Boggs
71 Ashfield St.
Piedmont, WV 26750
Respondent

Rebecca L. Stepto (Bar No. 3597)
Executive Director
West Virginia Ethics Commission
210 Brooks St., Suite 300
Charleston, WV 25301
(304) 558-0664
(304) 558-2169 (fax)

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

In Re:

GRACE RUSSELL **COMPLAINT NO. VCRB 2012-13**

FINAL DECISION AND ORDER

This proceeding arises under the West Virginia Governmental Ethics Act, W. Va. Code § 6B-2-1 et seq. ("Ethics Act"). The Ethics Commission is the duly authorized state agency to enforce the Ethics Act and conduct hearings pursuant to the provisions of W. Va. Code § 6B-2-4.

Complainant Ray Hall filed a Verified Complaint against Respondent Grace Russell, a member of the City of Piedmont Council, on February 7, 2012, alleging that she had violated the Ethics Act. The Ethics Commission's Probable Cause Review Board, following an investigation, entered an Order on April 24, 2015, finding probable cause to believe that Respondent Grace Russell ("Respondent" or "Russell") violated W. Va. Code § 6B-2-5(b) and ordering that a Statement of Charges be prepared and that a public hearing be scheduled. A Statement of Charges and Notice of Hearing was issued on April 24, 2015.

Respondent Russell requested on May 12, 2015, that the public hearing in her case be consolidated with the hearing to be held for Paula Boggs. Her request was granted and a consolidated hearing was held in Charleston, West Virginia, on July 23, 2015.

H.F. Salsbery presided at the hearing as the independent Hearing Examiner. Ethics Commission General Counsel Kimberly B. Weber served as prosecutor. Respondent Russell was not represented by counsel. At the hearing, Ms. Weber presented as witnesses Complainant Hall, Freda Fisher and Bob Fike and introduced 21 exhibits and a CD recording of the December 30, 2011, Piedmont City Council meeting into the record. Respondent Russell presented testimony on her own behalf and introduced no exhibits into the record.

A certified court reporter created a stenographic record of the hearing and a transcript of the proceedings. Subsequent to the hearing, the Commission and Respondent Russell each timely submitted proposed Findings of Fact and Conclusions of Law. The Hearing Examiner submitted (recommended) Findings of Fact and Conclusions of Law on August 20, 2015. The Commission was provided with the

hearing transcript, all exhibits and the Hearing Examiner's recommended Findings of Fact and Conclusions of Law ["Hearing Examiner's Recommendations"] on or about September 24, 2015.

At the Commission's regular meeting on October 1, 2015, where a quorum of the Commission was present and voting, the Commission thoroughly considered the record and the Hearing Examiner's Recommendations and reached its decision. Commissioner Jack Buckalew presided.

The Hearing Examiner's Recommendations are attached hereto and are incorporated herein by reference with the following exceptions, additions and/or modifications:

PRELIMINARY MATTERS

The Commission adopts the section of the Hearing Examiner's Recommendations entitled "Preliminary Matters."

FINDINGS OF FACT

The Commission adopts each of the 16 "Findings of Fact" set forth in the Hearing Examiner's Recommendations with the following exceptions, additions and/or modifications:

1. In Findings of Fact No. 3, "Transcript, page 78" is modified to "Transcript, pp. 31-36, 45, 60-62, 70, 78, 81-82 and 85."
2. In Findings of Fact No. 4, "Transcript, generally" is modified to "Transcript, pp. 47-49, 58-59 and 62."
3. In Findings of Fact No. 5, "Transcript, generally" is modified to "Transcript, pp. 44, 58-107."
4. In Findings of Fact No. 7, "Transcript, pages 89, 97 and 98" is modified to "Transcript, pp. 88-93, 97 and 98."
5. In Findings of Fact No. 8, "Transcript, page 94" is modified to "Transcript, pp. 94 and 107."
6. Finding of Fact No. 9 is modified to: "Council voted to move from executive session and returned to regular session, where it voted to retain Mr. Carskadon to represent the City. Transcript, pp. 107-08."
7. Finding of Fact No. 13 is modified to: "A vote was then taken on the motion that the City retain a lawyer for John Shingler, and Respondent Russell voted 'aye.' Transcript, pp. 121-22. No vote was recorded on the tape for Respondent Boggs, but she did not dispute during the July 23, 2015, hearing that she voted in favor of the motion. Complainant's Exhibit 13."
8. Finding of Fact No. 14 is not adopted.

CONCLUSIONS OF LAW

The Commission adopts the Hearing Examiner's recommended "Conclusion [sic] of Law" numbered 17, 18, 19 and 20, but does not adopt "Conclusion of Law" numbered 21.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the West Virginia Ethics Commission ORDERS the following sanctions against Respondent Grace Russell:

1. A public reprimand shall be issued against Respondent Grace Russell;
2. Respondent Grace Russell shall personally pay a fine of $1,000 to the West Virginia Ethics Commission on or before December 1, 2015;
3. Respondent Grace Russell shall personally reimburse the West Virginia Ethics Commission the amount of $1,500 for the actual costs of prosecuting her violation of the Ethics Act on or before December 31, 2015;
4. Respondent Grace Russell shall complete training on the West Virginia Ethics Act, either in person or by viewing the training provided on the Ethics Commission's website, *www.ethics.wv.gov*, on or before December 1, 2015. Respondent Russell shall notify the Commission in writing upon completion of this training.

This Order was entered on the 1st day of October, 2015.

Jack Buckalew, Acting Chairperson
West Virginia Ethics Commission

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

RAY HALL,

Petitioner,

v. Complaints Nos. VCRB 2012-12 and 2012-13

PAULA BOGGS AND
GRACE RUSSELL,

Respondents.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Preliminary Matters

A hearing on these two Complaints was held on July 23, 2015, at the offices of the West Virginia Ethics Commission, 210 Brooks Street, Charleston, West Virginia. The Respondents, Paula Boggs and Grace Russell, appeared in person but without counsel. Because the Respondents were not represented, the undersigned first cautioned them as to the possible penalties which the Commission could impose should the Respondents, or either of them, be found to have violated West Virginia Code (WVC) 6B-2-5(b), the only violation with which they were charged. Transcript, pages 5-6.

The Respondents raised, as an initial matter and in what the undersigned considered as a motion, the issue as to whether or not the Complaints were barred by the applicable statute of limitations, West Virginia Code (WVC) 6B-1-1, *et seq.* The undersigned finds that the two-year statute of limitations, WVC 6B-2-4(w), only requires that the *complaint* be filed within two years of the alleged violation. It does not require that a hearing be held within that two year window. Here, the alleged violation occurred on December 30, 2011, and the Complaints were filed on February 7, 2012. See Exhibit 1, hereto. Therefore, the statute of limitations was satisfied and Respondents' motion is DENIED.

I. Findings of Fact

The undersigned, as Hearing Examiner, makes the following Findings of Fact based on the record of the hearing conducted pursuant to notice on July 23, 2015, and the exhibits admitted during the course of that hearing. All of the following findings were either admitted or were undisputed unless otherwise noted:[1]

1. Respondents Paula Boggs (Ms. Boggs) and Grace Russell (Ms. Russell) were elected members of the City Council of the City of Piedmont, West Virginia, (the City) and held that position at all times relevant to these proceedings.

2. A Special Meeting (the Special Meeting) of the City Council for the City of Piedmont (the Council) was held on December 30, 2011, ". . . to discuss the ongoing investigation concerning the Federal Emergency Management Agency trailers." Complainant's Exhibit 13.

3. At the time of the special meeting, the State Police and other agencies were investigating whether the City's Foreman, John Shingler (Mr. Shingler), and possibly others used his or their position(s) to obtain Federal Emergency Management Administration (FEMA) surplus trailers utilizing the City of Piedmont as a conduit by which the trailers could be improperly and/or illegally obtained. Transcript, page 78.

4. Present at the meeting were the Respondents, Ms. Boggs and Ms. Russell, both of whom were Members of Council as well as Members of Council, Bob Fike, Ray Hall, Freda Fisher who appeared by telephone, City Clerk Betsy Rice, City Foreman John Shingler, Mayor Lester Clifford and an attorney, James Carskadon, who had from time to time represented the City in the past. Transcript, generally.

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[1] Because the December 30, 2011, meeting where the alleged violation took place was taped and because the conversations on the tape admitted without objection, much of what took place at the December 30th meeting is uncontroverted.

5. The meeting began in open session and subsequently moved to executive session and a discussion was had regarding retaining Attorney Carskadon to represent the City in the matter of the investigation concerning the FEMA trailers and the involvement of the City, Mr. Shingler and perhaps others. Transcript, generally.

6. Mr. Carskadon also advised Mr. Shingler to retain counsel, and, in fact, required it. Transcript, page 72.

7. Attorney Carskadon was also asked if he could represent Mr. Shingler as well, and he opined that he could only represent Mr. Shingler if he, Mr. Shingler, had acted within the scope of his employment otherwise he, Mr. Shingler, would need separate counsel. Transcript, pages 89, 97 and 98.

8. Mr. Shingler asked that the City of Piedmont pay for separate legal counsel to represent him should he be found to have acted outside the scope of his employment. Transcript, page 94.

9. After a lengthy discussion, Mr. Carskadon was retained to represent the City. Transcript, page 108.

10. Respondent Boggs then made a motion that the City retain a lawyer for Mr. Shingler. Transcript, page 110. Respondent Russell seconded the motion. Transcript, page 110.

11. A discussion was held concerning the propriety of the City of Piedmont retaining counsel for Mr. Shingler under the circumstances that had been described, e.g. his personal conduct. Transcript, pages 111-113. Ultimately, a question was posed by one of the members of council to Mr. Carskadon who apparently attended the meeting during the entire discussion, "Before I vote, I'd like to ask our newly appointed City Attorney: Do you see any ethics or conflict issues with the City paying for any individuals involved in this." Transcript, page 113. Attorney Carskadon, after delivering a lecture regarding this situation, offered to research the issue. Transcript, pages 115-

116. However, Respondent Boggs interjected, "I'm not comfortable letting John (Shingler) hang there while you do that." Transcript, page 116.

12. Attorney Carskadon asked the rhetorical question whether the City would pay the attorney fees for the other people under investigation. Transcript, page 119. Both Respondents responded, "No." Transcript, page 119.

13. A vote was then taken and Respondent Russell voted "aye". Transcript, page 122. No vote was recorded on the tape for Respondent Boggs but she did not dispute that she voted for her motion during the July 23, 2015, hearing. Transcript, generally.

14. After adjourning the executive session, the public portion of the meeting resumed. Respondent Boggs made a motion which Respondent Russell seconded, consistent with the motion she made during the executive session, i.e. that the City pay a retainer of not more than $10,000 for a lawyer, other than Mr. Carskadon, to represent Mr. Shinger. Complainant's Exhibit 13. The motion passed by the same vote as had been had in executive session, i.e. 2-1, with Respondents Boggs and Russell voting "yes." Complainant's Exhibit 13.

15. Mr. Shingler retained counsel for his personal defense and the City of Piedmont paid his counsel $10,000 on Mr. Shingler's behalf. Complainant's Exhibits 16 and 17. [2]

16. Neither Respondent disputed evidence adduced at the July 23, 2015, hearing that they, along with others, knew that Mr. Shingler was under investigation at the time of the December 30, 2011, council meeting. Transcript, pages 21 and 166.

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[2] Mr. Shingler ultimately pled guilty to a charge of Conversion of Government Property. Complainant Exhibit 19.

II. Conclusion of law

17. Respondents were elected public officials at all times relevant to the Complaint and Statement of Charges, and, therefore, are subject to the provisions of the West Virginia Government Ethics Act (the Ethics Act), West Virginia Code (WVC) 6B-1-1, *et seq.*

18. At the time of their actions, Respondents knew that Mr. Shingler was under investigation for alleged criminal violations.

19. Respondents, by their actions in moving, seconding and voting for the expenditure of public funds for the defense of an individual's personal actions misused their public positions in violation of WVC 6B-2-5(b).

20. The Complainant proved beyond a reasonable doubt the allegations in the Statement of Charges that Respondents used public monies, in excess of a *de minimus* amount, for the personal gain of Mr. Shingler, and, therefore, violated the provisions of WVC 6B-2-5(b).

21. WVC 6B-2-4(r) authorizes the West Virginia Ethics Commission to impose sanctions against the Respondents, and the undersigned recommends the following sanctions as to each:
    a. That the Respondents be publically reprimanded; and
    b. That the Respondents pay the costs of this action not to exceed $1,500 each; and
    c. That the Respondents, if they or either of them are still in office at the time the Commission issues its opinion herein or prior to Respondents, or either of them, again holding public office, be required to take and complete such training as the Ethics Commission may require, e.g. the video on the Ethics Commission's website, www.ethics.wv.gov., and

notify the Commission in writing and under oath that Respondent(s) completed the required training.[3]

Respectfully submitted this 20th day of August, 2015

H. F. Salsbery, Hearing Examiner

[3] It is the opinion of the undersigned that if the City of Piedmont desires reimbursement from the Respondents for the $10,000 paid for Mr. Shingler's defense then the City should pursue that with Respondents.

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

In Re:

GRACE RUSSELL **COMPLAINT NO. VCRB 2012-13**

CERTIFICATE OF SERVICE

I, Rebecca L. Stepto, Executive Director of the West Virginia Ethics Commission, certify that I mailed a true and complete copy of the foregoing **FINAL DECISION AND ORDER** via first-class, United States mail, postage prepaid, and via Certified Mail, Return Receipt Requested, on October 1, 2015, upon:

Grace Russell
8 West Hampshire Street
Piedmont, WV 26750
Respondent

Rebecca L. Stepto (Bar No. 3597)
Executive Director
West Virginia Ethics Commission
210 Brooks St., Suite 300
Charleston, WV 25301
(304) 558-0664
(304) 558-2169 (fax)