
WEST VIRGINIA CODE CHAPTER 4
ARTICLE 5

WV Legislature

§4-5-1. Commission on Special Investigations continued; composition; appointment and terms of members.

The Commission on Special Investigations is continued. The commission shall continue to be composed of the President of the Senate and four members of the Senate, to be appointed by the President of the Senate, no more than two of whom shall be from the same political party; and the Speaker of the House of Delegates and four members of the House of Delegates, to be appointed by the Speaker of the House of Delegates, no more than two of whom shall be appointed from the same political party: Provided, That in the event the membership of a political party is less than 15 percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than 15 percent membership may be one from that house. The commission shall be chaired by the President of the Senate and the Speaker of the House of Delegates. All members appointed to the commission by the commission chairs serve until their successors are appointed as provided in this section.

§4-5-2. Powers and duties generally.

(a) The Commission on Special Investigations may, by majority vote:

- (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 the recommendation; and
- (7) Make written reports deemed advisable by the commission to the members of the Legislature between its sessions. On the first day of each regular session of the Legislature, the commission shall make an annual report on its activities to the Legislature containing recommendations for any proposed legislation which it considers necessary to carry the recommendations into effect.

(b) The commission may also:

- (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 §52-2-14 of this code to consider any matter which the commission considers in the public interest and, in support thereof, make available to the court and the grand jury the contents of any reports, files, transcripts of hearings, or other evidence pertinent to the matter;
- (3) Employ necessary legal, technical, investigative, clerical, stenographic, advisory, and other personnel and, within the appropriation specified in §4-5-4 of this code, fix reasonable compensation of any persons and firms that are employed. The commission's investigative staff may consist of a director, deputy director, senior investigators, and investigators as approved by the cochairs: Provided, That the commission may authorize certain employees

of the commission to administer oaths and take affidavits and depositions anywhere in the state;

(4) Consult and confer with all public and private persons and organizations, any entity of federal or state government or of any political subdivision of the state, that have information and data pertinent to an investigation; and all state agencies and state political subdivisions shall cooperate to the fullest extent with the commission;

(5) Call upon any entity of state government or of any political subdivision of the state for any services, information, and assistance the commission considers advisable;

(6) Refer appropriate matters to the office of the United States Attorney, or other appropriate state or federal law-enforcement entity, and cooperate with such office in the disposition of matters so referred; and

(7) Interview witnesses and require production from any entity of state government, or of any political subdivision of the state, of books, records, documents, papers, computers, laptops, computer hard drives, electronic records including, but not limited to, emails, electronic files, electronic documents and metadata, or any other thing, in any form in which it may exist, as the commission believes should be examined to make a complete investigation, except where the records, documents, data, or items are protected from disclosure by state or federal law or privilege recognized by state or federal courts: Provided, That a request for production pursuant to this subdivision may be in the form of a written letter from the director of the commission in lieu of a subpoena.

(c) Notwithstanding any provision of this code to the contrary, specific personnel may be designated by the commission to carry a firearm in the course of performing his or her official duties: Provided, That as a precondition of being authorized to carry a concealed weapon in the course of their official duties, any such designated personnel shall first successfully complete a firearms training and certification program which is equivalent to that which is required of members of the State Police. A person so designated shall also possess a license to carry a concealed deadly weapon in the manner prescribed in §61-7-1 et seq. of this code.

§4-5-3. Executive sessions; hearings; subpoena power; enforcement provisions.

The commission may conduct proceedings in a confidential executive session for the purpose of establishing business, establishing policy, reviewing investigations, and interrogating a witness or witnesses: Provided, That if a witness desires a public or open hearing the witness may demand an open hearing and shall not be heard otherwise: Provided, however, That if a witness desires a hearing in an executive session, the witness may so request and shall not be heard otherwise. However, members of the staff of the commission may be permitted to attend executive sessions.

All witnesses appearing before the commission shall testify under oath or affirmation, and any member of the commission or its staff may administer oaths or affirmations to such witnesses. To compel witnesses to attend a hearing or produce any books, records, documents, or papers, or any other tangible thing except where the records, documents, data, or items are protected from disclosure by state or federal law or privilege recognized by state or federal courts, the commission may issue subpoenas, signed by one of the cochairs: Provided, That the commission may specifically authorize or delegate the power to its director to sign subpoenas on its behalf. The 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 or her 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: Provided, That prior to seeking circuit court relief, the commission may, in its discretion, first demand the head of the public agency in which an employee has failed to appear or which has failed to produce requested or subpoenaed material to appear before the commission and address the basis for the failure to comply and whether compliance will be forthcoming.

§4-5-4. Compensation and expenses of members; other expenses; how paid.

The members of the commission shall receive travel, interim, and out-of-state expenses, as authorized in §4-2A-6 and §4-2A-8 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 for Joint Expenses.

§4-5-5. Investigations exempt from public disclosure requirements.

(a) The investigations conducted by the commission and the materials, in any medium, including hard copy and electronic, placed in the custody of the commission as a result of any such investigation are exempt from public disclosure under the provisions of chapter 29B of this code.

(b) Notwithstanding any other provision of this code to the contrary, the commission may dispose of printed materials placed in its files upon a vote of the commission: Provided, That the commission shall save copies of materials filed on or after January 1, 2010, in electronic form prior to their disposal.

(c) When the commission receives information, in any form, from any office, agency, department, or branch of state or local government that is bound by state or federal law to maintain the confidentiality, privacy, or security of the information, that governmental body shall identify to the commission what information and materials are so protected and identify the law or laws governing the confidentiality, privacy, or security of the information. The commission shall protect the confidentiality, privacy, or security of the protected information in like manner and to the same level as is required of the governmental body providing the information to the commission. When the commission has completed an investigation and no longer has a need to maintain the confidential or protected information or materials, the commission shall notify the entity from whom the information was received and, unless requested to return the information or materials, shall destroy the same in a secure fashion and notify the entity from whom the information was received of this destruction.

§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 \$100 nor more than \$1,000, or confined in jail for not more than one year, or both, in the discretion of the court.

§4-5-7. Impersonation or obstruction of commission member or staff.

(a) A person is guilty of impersonating a member or employee of the Commission on Special Investigations when he or she does one of the following:

(1) Falsely represents himself or herself to be a member or employee of the commission;

(2) Falsely represents himself or herself to be acting under the order or direction, or to have the authority, of the commission or its staff; or

(3) Falsely presents a badge, credentials, other insignia or likeness thereof, used by the commission for identification as a member of the commission or its staff.

(b) Any person who, by threats, menaces, or acts, or who forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a Commission on Special Investigations member or employee acting in his or her official capacity, is guilty of obstruction: Provided, That failure to produce information or records at the request of a member or employee of the commission is not obstruction when such disclosure is prohibited by state or federal law.

(c) Any person who violates any provision of this section is guilty of a misdemeanor and upon conviction thereof, shall be fined not less than \$500 nor more than \$2,500, or confined in jail for not more than one year, or both fined and confined.

§4-5-8. Award of duty weapon upon retirement; disposal of other weapons used by staff.

(a) Upon the retirement of a member of the commission's investigative staff, the cochairs of the commission shall award to the retiring employee a duty weapon used by the employee when that employee retires honorably after having served:

- (1) At least 20 years of actual service on the commission's investigative staff;
- (2) At least 20 years in law enforcement and an additional 10 years of service on the commission's investigative staff; or
- (3) Any period of service on the commission's investigative staff and retires due to total physical disability resulting from his or her service to the commission.

(b) The award of the duty weapon shall be without charge to the employee or other condition: Provided, That the cochairs shall not award a duty weapon to any retiring employee whom the cochairs find to be mentally incapacitated or to be a danger to any person or to the community.

(c) The commission has the sole authority to determine the manner of disposition of duty weapons of members of the commission's investigative staff when replaced due to age or routine wear. The commission may offer these surplus weapons for sale at fair market value to any active or retired member of the commission's investigative staff who has been designated to carry a firearm in the course of duties with the commission, with the proceeds of any sales to be used to offset the cost of new weapons. Surplus duty weapons may also be included as trade-ins toward the purchase of new weapons.