

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

**In the matter of: CIC No. 2008-02
Respondent, Former Wood County Sheriff Ken Merritt**

STATEMENT OF CHARGES AND NOTICE OF HEARING

The members of the Probable Cause Review Board of the West Virginia Ethics Commission, by unanimous vote, entered an Order dated May 20, 2009 finding probable cause to believe that Respondent violated W. Va. Code § 6B-2-5, and directing the preparation of this Statement of Charges. Board Member Jim Shepherd recused himself from said vote since he was a sitting Member of the Ethics Commission when the Commission initiated this complaint on March 6, 2008.

The members of the Probable Cause Review Board charge that within two years before the filing of the complaint in this matter, Ken Merritt, as the elected Sheriff of Wood County, did knowingly and intentionally use his office for his own private gain and for the private gain of another.

COUNT I

1. At all times relevant herein, Ken Merritt was the elected Sheriff of Wood County. In his official capacity as Sheriff, Respondent was the chief law enforcement officer and treasurer of Wood County.
2. Respondent has an adult son, Brian Merritt.
3. In early 2006, Brian Merritt stole one or more County issued gasoline credit cards from his father, including a BP card and an Exxon card.

4. Brian Merritt began unlawfully making charges using the stolen BP card on or about April 26, 2006.

5. Brian Merritt began unlawfully making charges using the stolen Exxon card on or about May 16, 2006.

6. In May 2006, or sooner, Respondent became aware that his son had stolen the cards. Specifically, in May 2006, a family friend, Robin Jenkins, informed Respondent that his son had stolen the County issued gasoline credit cards and was using them.

7. Upon information and belief, Respondent already knew prior to his conversation with Jenkins that the cards had been stolen. Indeed, upon information and belief, in an earlier confrontation that he had with his father, Brian Merritt admitted having at least one card and gave Respondent back the County issued BP card.

8. In late May 2006, upon information and belief, Respondent told his Chief Deputy that his wallet that he keeps his county credit cards in was missing; his Chief Deputy recommended that he cancel any missing cards.

9. Despite knowing that the cards had been stolen, and unlawful charges had been made, Respondent took no action to officially put the County on notice about the theft and the unlawful charges.

10. Despite knowing that the cards had been stolen and unlawful charges had been made, and against the advice of his Chief Deputy, Respondent took no action to have the missing County issued gasoline credit cards cancelled to prevent his son from incurring additional unlawful charges.

11. Despite knowing that unlawful charges had been made, Respondent allowed the County to process the credit card statements, and to pay the charges his son had unlawfully incurred.

12. Respondent failed to notify the County about the stolen credit cards and/or the unauthorized charges thereto, until on or about June 16, 2006, when a County employee alerted the Chief Deputy of unusual charges on the Exxon credit card bill. The Chief Deputy asked a Deputy to investigate the matter.

13. Later that same day, Respondent advised the Chief Deputy that the missing credit card was issued to Respondent, and he told the Chief Deputy to call off the investigation. When the Chief Deputy told Respondent that it should be investigated, Respondent refused because he considered himself to be the victim and said he did not want to prosecute.

14. Also on or about June 16, 2006, only **after** it became clear that others in the Sheriff's Department were now aware that at least one credit card was missing, Respondent finally paid for some of the unauthorized charges his son had unlawfully incurred on the Exxon card.

15. On or about June 26, 2006, only **after** the City of Parkersburg Police Department began to investigate the matter at the request of the Wood County Prosecuting Attorney, Respondent finally paid for some of the unauthorized charges his son had unlawfully incurred on the BP card.

16. Respondent knowingly and intentionally obstructed the criminal process by failing to take appropriate action to refer the matter of the missing credit cards to the appropriate law enforcement offices for investigation and/or prosecution, for his own private gain and for the private gain of others.

COUNT II

17. Paragraphs 1-15 hereinabove set forth are hereby incorporated by reference.

18. Respondent knowingly and intentionally failed to prevent the unlawful expenditure of public funds for the private gain of another.

RELEVANT STATUTORY PROVISIONS

W. Va. Code § 6B-2-5(b) provides, in relevant part, that public officials may not knowingly or intentionally use their offices or the prestige of their offices for private gain.

W. Va. Code § 62-10-9 reads:

Sheriffs ... are hereby authorized and empowered within their respective counties to make arrests for any crime for which a warrant has been issued in violation of any laws of the United States or of this state, and to make arrests without warrant for all violations of any of the criminal laws of the United States, or of this state, when committed in their presence....”

W. Va. Code § 7-5-1 states:

The sheriff shall be ex officio county treasurer and as such treasurer shall receive, collect and disburse all moneys due such county or any district thereof.... The sheriff shall keep his office at the courthouse for the county, in a suitable room or rooms provided for that purpose by the county court (county commission), in which all money and property in his possession shall be kept, unless deposited by him in a county depository, in which case an accurate daily deposit account thereof shall be kept in his office....

NOTICE OF HEARING

You are hereby notified that on or before August 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.

The Ethics Commission will employ a hearing examiner to preside at the hearing. The hearing examiner will compile a record and submit it to the members of the Ethics Commission who will make a final decision on this complaint.



Theresa M. Kirk
Executive Director



Date