

BEFORE THE STATE OF WEST VIRGINIA ETHICS COMMISSION

IN RE:

EMMETT S. PUGH
Mayor of the City of Beckley

Complaint Nos. VCRB 2009-09
VCRB 2011-04

STATEMENT OF CHARGES

and

NOTICE OF HEARING

On March 25, 2009, and March 1, 2011, Complaints VCRB 2009-09 and VCRB 2011-04, were filed, respectively, against Emmett S. Pugh, Mayor of the City of Beckley. In accordance with W.Va. Code § 6B-2-4, both matters were referred to the Probable Cause Review Board of the West Virginia Ethics Commission and consolidated.

On March 21, 2012, the Probable Cause Review Board, by unanimous vote, found probable cause to believe that the Respondent, Emmett S. Pugh, violated multiple provisions of the West Virginia Ethics Act. By Order dated March 28, 2012, the Probable Cause Review Board entered its probable cause determination and directed the preparation of this Statement of Charges.

SUMMARY OF CHARGES

The members of the Probable Cause Review Board charge that within the two years before the filing of the Complaints in this matter, Emmett S. Pugh, Mayor of the City of Beckley, engaged in an ongoing course of conduct to use his Mayoral position and office for his own private financial gain and benefit as well as the private gain and benefit of others. Additionally, the Probable Cause Review Board charges that, in return for providing public

contracts with the City and the free use of City resources, equipment and labor, Mayor Pugh was financially rewarded with gifted ownership interests in companies resulting in private gain of more than \$12,000.00. Mayor Pugh retains an ownership interest in at least one of these companies and continues to receive rental income and distributions from its operation. Further, the Probable Cause Review Board charges that Mayor Pugh has inappropriately utilized a vehicle leased under the name of the Beckley Sanitary Board, of which he is Chairman, including maintaining inaccurate mileage logs and obtaining improper mileage reimbursements.

COUNTS ONE - NINE

It accordance with the Probable Cause Order dated March 28, 2012, it is hereby **ALLEGED** and **CHARGED** that Respondent, Emmett S. Pugh, violated the Ethics Act as follows:

INTRODUCTION

1. Since 1988, and at all relevant times herein, Respondent, Emmett S. Pugh, has been the Mayor of the City of Beckley, West Virginia.
2. As an elected public servant, Respondent Pugh is subject to the provisions of the Ethics Act. W.Va. Code § 6B-2-5(a).
3. As Mayor of the City of Beckley, Respondent Pugh is the “chief executive officer” of the City, and oversees the several public service departments of the City, including specifically, the City’s Public Works Department. Section 17 of the City of Beckley Charter and W.Va. Code § 8-10-1.
4. Additionally, as the Mayor of the City of Beckley, Respondent Pugh serves as the Chairman of the Beckley Sanitary Board; and presides over the city council, which is formally known as the Beckley Common Council.

5. Given his Mayoral position, the employees of the City of Beckley and the Beckley Sanitary Board are subordinate employees of Respondent Pugh.

6. Roy Shrewsbury is a businessman in and around the Beckley area. According to his Financial Disclosure Statements filed with the West Virginia Ethics Commission, Mr. Shrewsbury is an owner or has an ownership interest in approximately fifteen (15) businesses, including notably ESI, Inc., Woodland Properties, LLC, and ATV at the Rock, Inc.

7. R. Woodrow (“Woody”) Duba is the general manager of Beaver Coal Company, Ltd., and has acted in such capacity for over twenty years.

8. Beaver Coal Company, Ltd. is a landholding company holding rights to over 47,000 acres of property in Raleigh County, WV.

9. Beaver Coal Company, Ltd. is a limited partnership established in Pennsylvania. The partnership is comprised of a general partner (Beaver Management Corporation) and shareholders.

10. Upon information and belief, both Mr. Duba and Mr. Shrewsbury are shareholders of Beaver Coal Company, Ltd., having purchased shares of the company together approximately five years ago.

I.
Woodland Properties, LLC
(Counts One – Four)

11. In 2006, Woody Duba approached Mayor Pugh about building a subdivision off the East Beckley Bypass in East Beckley. In particular, they discussed having the City annex seventy-two (72) acres of land owned by Beaver Coal Company, Ltd. (hereinafter “Beaver Coal Company”).

12. During the course of their conversation, Mayor Pugh offered the use of various City services, including free labor to pave roads in the future subdivision, known as Woodlands Village subdivision.

13. On August 8, 2006, the Common Council approved the annexation of Beaver Coal Company’s 72 acres of land.

14. Approximately 8 weeks later, on September 27, 2006, a new company, named Woodland Properties, LLC, was formed by Beckley businessman Roy Shrewsbury.

15. Upon information and belief, the formation of the new company was a joint decision by Mr. Shrewsbury and Mr. Duba with the intention that Woodland Properties, LLC develop the Woodlands Village subdivision by selling lots and/or houses.

16. At the time of the company formation, Mr. Shrewsbury was the only member of Woodland Properties, LLC.

17. Upon information and belief, Mr. Shrewsbury and Mr. Duba discussed bringing Mayor Pugh in as an owner of Woodland Properties, LLC, and ultimately agreed to give the Mayor an ownership interest, so long as Mr. Shrewsbury retained at least 51% interest in the company.

18. On or about October 18, 2006, Mr. Shrewsbury gave, and the Mayor accepted, a 49% interest in Woodland Properties, LLC.

19. Mayor Pugh paid no money into the company nor provided collateral in exchange for his 49% interest.

20. Thereafter, on October 25, 2006, a week after Mayor Pugh became an owner, Woodland Properties, LLC purchased approximately 10 acres of the annexed 72 acres owned by Beaver Coal Company for \$800,000.00.

21. Then, on May 5, 2007, Woodland Properties, LLC purchased an additional 16 acres from Beaver Coal for \$1.4 million.

22. Both purchases involved the sale of the "lots" in the annexed 72 acres. The remaining acreage was retained by Beaver Coal Company and was deemed to constitute the future "roads" of the Woodlands Village subdivision.

23. During the period of the Mayor's ownership interest, the Beckley Sanitary Board installed an alternate main line extension (without PSC approval) in the proposed subdivision. Pursuant to a written agreement between the Beckley Sanitary Board and Beaver Coal Company, the Sanitary Board provided its employees and equipment free of cost to Beaver Coal Company. In exchange, Beaver Coal Company agreed to reimburse the Sanitary Board for non-Sanitary Board supplies and equipment.

24. In addition, during the period of the Mayor's ownership interest, the City's Department of Public Works paved the roads for the proposed Woodlands Village subdivision. There was neither a written agreement nor Common Council approval. As with the sewage system, the City provided its employees and equipment free of cost to Beaver Coal Company. Beaver Coal Company only paid for the asphalt.

25. Respondent Pugh maintained this interest until December 31, 2007, at which time he resigned/terminated his ownership interest after questions were raised about his potential conflict.

COUNT ONE

(Use of Public Office for Private Gain)

W.Va. Code § 6B-2-5(b)

26. The allegations set forth in paragraphs 1-25 are realleged and incorporated by reference.

27. It is hereby charged that Mayor Pugh knowingly and intentionally used his public office for his own private gain in violation of W.Va. Code § 6B-2-5(b) when he accepted a 49% ownership interest in Woodland Properties, LLC, and cash distributions totaling \$12,000.00 from Woodland Properties, LLC.

28. W.Va. Code § 6B-2-5(b) states, in relevant part:

A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. . . . The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, **without compensation**, does not constitute the use of prestige of office for private gain.

(emphasis added)

29. W.Va. C.S.R. § 158-6-6 states:

It is unlawful for a public official or public employee to accept any money or thing of value from any person for providing business or other benefits to that person through the public official's or public

employee's governmental agency or as a result of his influence or control.

30. W.Va. C.S.R. § 158-6-7 states:

It is unlawful for a public official or employee to receive money or any thing of value from any person for the purpose of influencing or persuading the official to perform his duties in a manner to benefit such person.

31. As Mayor, Respondent Pugh was involved in, oversaw, and/or facilitated the annexation of Beaver Coal Company's land into the City of Beckley. He additionally provided various City services, including labor and equipment, without cost to Mr. Duba/Beaver Coal Company.

32. The Mayor was aware of the subdivision plan by Mr. Duba, and aware of the intent to sell lots/houses on the annexed land.

33. The Mayor accepted a 49% interest in the Woodland Properties, LLC knowing that the company was going to sell lots/homes on the annexed land, and derive compensation from the sales.

34. During the course of his ownership interest in Woodland Properties, LLC, Mayor Pugh received two cash distributions totaling \$2,000.00, as well as a payment of \$10,000.00 on December 31, 2007.

COUNT TWO

(Accepting Improper Gifts)

W.Va. Code § 6B-2-5(c)

35. The allegations set forth in paragraphs 1-34 are realleged and incorporated by reference.

36. It is hereby charged that Respondent Pugh improperly accepted gifts from interested parties in violation of W.Va. Code § 6B-2-5(c) by:

- (i) Accepting a 49% ownership interest in Woodland Properties, LLC, and cash distributions arising therefrom, from individuals and/or entities which were interested parties to the City of Beckley, namely Roy Shrewsbury, Woody Duba, and/or Beaver Coal Company; and

(ii) Accepting a payment in the amount of \$10,000.00 from Roy Shrewsbury/Woodland Properties, LLC upon his resignation/termination from the company.

37. W.Va. Code § 6B-2-5(c) states in relevant part:

(c) *Gifts.* -- (1). . . No official or employee may knowingly accept any gift, directly or indirectly, . . . from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

38. Since at least 2006, Roy Shrewsbury has been doing and/or seeking to do business with the City of Beckley and its various governmental sub-units.

39. Additionally, at the time Mayor Pugh accepted the ownership interest in Woodland Properties, LLC, Beaver Coal Company/Woody Duba was doing business with the Beckley Sanitary Board, including, specifically, executing an alternate main line extension to the annexed land.

40. Further, the activities of Beaver Coal Company, as well as one or more businesses of Mr. Shrewsbury, were regulated by the Beckley Sanitary Board, the City of Beckley, and/or one of the City's departmental bodies.

41. In addition, on December 31, 2007, the same day as his resignation/termination from Woodland Properties, LLC, Mayor Pugh received \$10,000.00 from Roy Shrewsbury/Woodland Properties, LLC, even though there was not enough ownership equity in the company to make such a payment.

42. This payment was in contradiction of the written termination agreement which expressly stated that Mayor Pugh was not receiving any compensation for

terminating. The written termination agreement also stated that Mayor Pugh was released from any and all liabilities of the Company in exchange for \$1.00.

43. Finally, the ownership interest in Woodland Properties, LLC, as well as the \$10,000.00 payment, were offered with the intent to impair Mayor Pugh's impartiality and independent judgment and/or did impair his impartiality and independent judgment.

COUNT THREE

(Use of Public Office for own Private Gain
and the Private Gain of Another)
W.Va. Code § 6B-2-5(b)

44. The allegations set forth in paragraphs 1-43 are realleged and incorporated by reference.

45. It is hereby charged that Mayor Pugh knowingly and intentionally used his public office for his own private gain and the private gain of Beaver Coal Company/ Woody Duba and Roy Shrewsbury in violation of W.Va. Code § 6B-2-5(b) by:

- (i) Directing and/or authorizing the City of Beckley's Public Works Department to use, at the City's expense, City-owned equipment and City labor, to pave roads in the Woodlands Village subdivision which was being developed by Woodland Properties, LLC; and
- (ii) Directing and/or authorizing the Beckley Sanitary Board to use, at the Sanitary Board's expense, Sanitary Board equipment and labor, to install sewer lines/infrastructure in the Woodlands Village subdivision.

46. W.Va. Code § 6B-2-5(b) prohibits the use of public resources for the private gain of oneself as well as the private gain of another. In addition to the statutory prohibition in W.Va. Code 6B-2-5(b), the Ethics Commission's legislative rules establish prohibitions against improper use of government property (W.Va. C.S.R. § 158-6-5.2). *See also* W.Va. C.S.R. § 158-6-6 and W.Va. C.S.R. § 158-6-7.

47. In his position as Mayor, Mr. Pugh authorized and/or directed the City Public Works Department to install and pave the roads in the annexed land in furtherance of the proposed Woodlands Village subdivision.

48. At the time of the paving, and still today, the roads have remained the private property of Beaver Coal Company.

49. At the time of the paving, Mayor Pugh had an ownership interest in Woodland Properties, LLC and a financial interest in selling the lots in the proposed subdivision.

50. Pursuant to the authorization and/or direction of Mayor Pugh, the City Public Works used its own employees and equipment to install and pave the privately-owned roads.

51. The labor and equipment were provided by the City at no cost to Beaver Coal Company or to Woodland Properties, LLC (a.k.a. Roy Shrewsbury/Mayor Pugh), thereby saving Beaver Coal Company and/or Woodland Properties, LLC money and/or the expense of having to pay a private contractor to install and pave the roads.

52. In his position as Chair of the Beckley Sanitary Board, Mayor Pugh authorized and/or directed the Sanitary Board to install a sewage piping system in the proposed subdivision under an alternate main line extension agreement.

53. The agreement was a written document signed by Luke Richmond, general manager of the Beckley Sanitary Board and Woody Duba, general manager of Beaver Coal Company. The agreement was signed by the parties on or about September 25, 2006.

54. Although required by law, neither the proposed alternate main line extension nor the written agreement were submitted by the Beckley Sanitary Board to the West Virginia Public Service Commission for approval. *See* W.Va.C.S.R. § 150-5-5.5.h.7.

55. Pursuant to the agreement between Beaver Coal Company and the Beckley Sanitary Board, the Sanitary Board agreed to install the main line extension and piping in the Woodlands Village subdivision using the Sanitary Board's employees and equipment at no cost to Beaver Coal Company. Beaver Coal Company agreed to pay the cost of equipment and supplies which were not owned by the Beckley Sanitary Board.

56. By providing labor and City-owned equipment at no cost to Beaver Coal Company or to Woodland Properties, LLC (a.k.a. Roy Shrewsbury/Mayor Pugh), Beaver Coal Company and/or Woodland Properties, LLC saved money and/or the expense of having to pay a private contractor to install the main line extension.

COUNT FOUR

(Prohibited Interest in Public Contract)

W.Va. Code § 6B-2-5(d)

57. The allegations set forth in paragraphs 1-56 are realleged and incorporated by reference.

58. It is hereby charged that Mayor Pugh violated W.Va. Code § 6B-2-5(d) by having a financial interest in, and/or receiving the benefits of, the contracts between the City and Beaver Coal Company when the City (a) paved roads; and, (b) installed piping and infrastructure at the Woodlands Village subdivision.

59. W.Va. Code § 6B-2-5(d)(1) states, in relevant part:

... no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control...

60. Further, W.Va. C.S.R. § 158-8-2 (“direct authority and control”) states:

Examples of individuals with direct authority and control over the awarding of public contracts include all elected or appointed public officials in the executive branch of City, County and State government, superintendents, assistant superintendents, purchasing directors, County Commissioners, County Board members and City managers.

61. As the Mayor and Chair of the Sanitary Board, Respondent Pugh had the authority and control over the awarding of contracts and agreements.

62. For purposes of W.Va. Code § 6B-2-5(d), the agreement between the City and Beaver Coal Company to pave the roads in the Woodlands Village subdivision constituted a public contract.

63. Similarly, the written agreement between the Beckley Sanitary Board and Beaver Coal Company to install an alternate main line extension constituted a public contract for purposes of W.Va. Code § 6B-2-5(d).

64. At the time of both the paving and the installation of the alternate main line extension, Mayor Pugh had an ownership interest in Woodland Properties, LLC, and owned a portion of the “lots” in the proposed subdivision.

65. Additionally, Mayor Pugh had an interest in the benefits of the contract between Beaver Coal Company and the Beckley Sanitary Board. Specifically, the paving and infrastructure increased the value of the lots which Mayor Pugh and Mr. Shrewsbury owned.

66. Further, Mayor Pugh had an indirect financial interest in Beaver Coal Company’s contracts with the City given his and Mr. Shrewsbury’s financial arrangement with Beaver Coal Company relating to Woodlands Properties, LLC’s purchase of the lots and the repayment of the note held by Beaver Coal Company.

II.

ATV at the Rock, Inc. (d.b.a. Burning Rock) (Counts Five – Six)

67. The allegations set forth in paragraphs 1-66 are realleged and incorporated by reference.

68. Following his resignation/termination from Woodland Properties, LLC, Mayor Pugh accepted a 10% ownership interest in ATV at the Rock, Inc. from Roy Shrewsbury and/or Woody Duba/Beaver Coal Company, and retains this interest.

69. ATV at the Rock, Inc. was formed in March 2008 by Roy Shrewsbury, and was officially recognized as a corporation by the Secretary of State on March 19, 2008.

70. ATV at the Rock, Inc. is the corporate holding company for multiple income generating businesses collectively doing business as Burning Rock Outdoor Adventure Park (hereinafter “Burning Rock”).

71. Burning Rock consists of nearly 100 miles of off-road trails, situated over 8,000 acres of land near Sophia, WV.

72. Beaver Coal Company owns the 8,000 acres of land, and entered into a lease agreement with ATV at the Rock, Inc. to operate Burning Rock.

73. The other businesses within Burning Rock cater to users of the ATV trails. Specifically, there is an ATV rental shop, a general store, and cabins available for rent. The incomes generated from all of these businesses go to ATV at the Rock, Inc.

74. Upon information and belief, there are currently six directors/owners, each with varying percentages of ownership:

Roy Shrewsbury (Pres.)	30%
Linda Duba (Vice Pres.)	30%
Leslie Martin (Sec./Treas.)	10%
Libby Powell	10%
Melvin Duba	10%
Emmett S. Pugh	10%

75. Upon information and belief, Linda Duba is the wife of Woody Duba and Melvin Duba is Woody Duba's brother.

76. Upon information and belief, Roy Shrewsbury consulted with Woody Duba about giving Mayor Pugh an ownership interest in ATV at the Rock, Inc., and they agreed to give Mayor Pugh 10 shares of the total 100 shares of the company (e.g. 10% interest).

77. As with Woodland Properties, LLC, Mayor Pugh paid neither monetary consideration into the company nor provided collateral for his ownership interest in ATV at the Rock, Inc.

COUNT FIVE

(Accepting Improper Gift)
W.Va. Code § 6B-2-5(c)

78. The allegations set forth in paragraphs 1-77 are realleged and incorporated by reference.

79. It is hereby charged that Mayor Pugh improperly accepted a gift in violation of W.Va. Code § 6B-2-5(c) by accepting a 10% ownership interest (and distributions/rental payments) in ATV at Rock, Inc. (d.b.a. Burning Rock) from individuals and/or entities

which were interested parties to the City of Beckley, namely Roy Shrewsbury, Woody Duba, and/or Beaver Coal Company.

80. In addition to their aforementioned relationships and business contracts with the City of Beckley, both Roy Shrewsbury and Beaver Coal Company, by and through Woody Duba, had existing contracts and agreements with the City of Beckley relating to the Beckley Intermodal Gateway (B.I.G.) project.

81. The gift of an ownership interest in ATV at the Rock, Inc. was offered with the intent to impair Mayor Pugh's impartiality and independent judgment and/or did impair his impartiality and independent judgment.

82. As a 10% owner, Mayor Pugh is entitled to the profits of ATV at the Rock, Inc., and received compensation during the period of his ownership interest, even though ATV at the Rock, Inc. (d.b.a. Burning Rock) had not yet turned a profit.

83. Further, given the corporate structure, extensive marketing, and growing popularity of the location, it is reasonably anticipated that ATV at the Rock, Inc. (d.b.a. Burning Rock) will continue to provide compensation to Mayor Pugh.

COUNT SIX

(Use of Public Office for Private Gain)

W.Va. Code § 6B-2-5(b)

84. The allegations set forth in paragraphs 1-83 are realleged and incorporated by reference.

85. It is hereby charged that Mayor Pugh used his public office for his own private gain in violation of W.Va. Code § 6B-2-5(b) when he accepted a 10% ownership interest in ATV at the Rock, Inc., and derived income in the form of distributions and rental payments.

86. At the time he accepted an ownership interest in ATV at the Rock, Inc., Mayor Pugh was aware that Roy Shrewsbury and Beaver Coal Company were doing business and/or seeking to do business with the City of Beckley, including, but not limited to the B.I.G. project.

87. Further, during the period of his ownership interest, Mayor Pugh negotiated and approved contracts on behalf of the City of Beckley with Mr. Shrewsbury and Mr. Duba/Beaver Coal Company.

88. During his ownership interest in ATV at the Rock, Inc., Mayor Pugh has received compensation as a direct result of his ownership interest and it is reasonably anticipated that his continued ownership interest will result in future financial gain for himself.

III. Beckley Intermodal Gateway Project (Counts Seven – Eight)

89. The allegations set forth in paragraphs 1-88 are realleged and incorporated by reference.

90. The Beckley Intermodal Gateway (B.I.G.) project is a multi-phase transportation center being constructed in downtown Beckley, which will be owned and operated by the City of Beckley. The Center will include a terminal for local and regional bus lines, a parking garage and a public event area.

91. The bulk of the funding, \$20 million, was secured in 2006 through a grant from the Federal Transit Administration. The City of Beckley was responsible for a 20 percent funding match, which, according to the City's website, came from \$2.3 million in land value and \$2.7 million in Department of Transportation revenue credits.

92. As Mayor, Respondent Pugh was the designated agent on behalf of the City of Beckley for the B.I.G. project. Although the Beckley Common Council had general approval authority, Mayor Pugh possessed the signature authority for the City, as well as the authority to direct and/or approve actions on behalf of the City.

93. Through a competitive bid process, the City retained the services of Parsons Brinkerhoff, an international architect firm, to act as project manager and oversee the interests of the City during construction.

94. In addition, a competitive bid process was used to select a general contractor for the construction of Phase I of the project. VCC, out of Atlanta, Georgia, was selected as the general contractor.

95. Phase I of the B.I.G. project is currently under construction and is scheduled to be completed within the coming months.

96. As part of this phase, the site had to be excavated and dirt removed from the site location. This removed dirt is commonly referred to as “spoils”.

COUNT SEVEN

(Use of Public Office for Private Gain of Another)
W.Va. Code § 6B-2-5(b)

97. The allegations set forth in paragraphs 1-96 are realleged and incorporated by reference.

98. It is hereby charged that Mayor Pugh used his public office for the private gain of another in violation of W.Va. Code § 6B-2-5(b) when he directed and/or authorized the placement of spoils from the Beckley Intermodal Gateway (B.I.G.) project to be deposited on property owned by Beaver Coal Company, and authorized improvements to Beaver Coal Company’s land.

99. As part of its contract with the City, Parsons Brinkerhoff retained several outside consultants from various disciplines (e.g. engineers, surveyors, etc.).

100. These consultants were paid directly by Parsons Brinkerhoff. Upon information and belief, the consultants’ time and work was considered part of Parsons Brinkerhoff contract with the City. The City paid Parsons Brinkerhoff for its services from the FTA grant.

101. One of the outside consultants Parsons Brinkerhoff retained was Roy Shrewsbury and his company, ESI, Inc.

102. At the direction of Roy Shrewsbury, Parsons Brinkerhoff selected property owned by Beaver Coal Company to place the spoils.

103. The property in question was six acres of approximately 50 total acres owned by Beaver Coal off Harper Road near the Harper Road exit off I-64.

104. As a stockholder in Beaver Coal Company, Mr. Shrewsbury had a financial interest in the use of the land owned by Beaver Coal Company. Additionally, upon information and belief, Mr. Shrewsbury was aware of a desire by Woody Duba/Beaver Coal Company to develop the land for commercial uses, including, possibly a restaurant.

105. Mayor Pugh was made aware of the site location and who owned the land.

106. On behalf of the City, Mayor Pugh authorized and/or approved an agreement with Woody Duba/Beaver Coal Company to place the spoils at the Harper Road location.

107. In or about August 2010, excavation from the B.I.G. site began and spoils were deposited at the Harper Road location. In accordance with permitting requirements, the spoils were transported and graded by a VCC sub-contractor (Horizon).

108. VCC was paid from the FTA grant for the work its sub-contractor performed transporting and grading the spoils.

109. However, after the spoils had been deposited on the Harper Road site and the grading completed, Mayor Pugh intervened on behalf of Beaver Coal Company and specifically directed the contractor to place a road over the spoils.

110. Upon information and belief, the placement of a new road on the location was at the request of Woody Duba, who desired to develop the newly graded spoils site for commercial development.

111. The road was not part of the original contracted spoils work, and necessitated a change order under the FTA grant.

112. Roy Shrewsbury was directed to design the road and the necessary re-grading of the spoils.

113. Mr. Shrewsbury, through his company ESI, Inc., was paid for his time and work associated with the re-design.

114. The Mayor approved the change order and expenditure of additional FTA grant funds on behalf of the City.

115. The cost of the change order exceeded \$80,000.00 and was paid from the FTA grant.

116. The placement of spoils and the placement of a road provided a financial gain to Beaver Coal Company. It also enhanced the site for future commercial use.

COUNT EIGHT

(Public Office for Private Gain of Another)

W.Va. Code § 6B-2-5(b)

117. The allegations set forth in paragraphs 1-116 are realleged and incorporated by reference.

118. It is hereby charged that Mayor Pugh used his public office for the private gain of another in violation of W.Va. Code § 6B-2-5(b) when he directed and/or authorized the City to contract directly with Roy Shrewsbury for the B.I.G. project after the City's architect, Parsons Brinkerhoff, terminated Mr. Shrewsbury's contract as one of its consultants for the B.I.G. project.

119. During the course of the B.I.G. project, an issue arose relating to Roy Shrewsbury's compliance with an internal Parsons Brinkerhoff regulation. Upon information and belief, Parsons Brinkerhoff required Mr. Shrewsbury/ESI, Inc. to obtain certain insurance coverage or Parsons Brinkerhoff would sever its contract with him and his company, ESI, Inc.

120. Mr. Shrewsbury maintains that he did not want to purchase the insurance because he could not afford the large premium and high deductible as a small company.

121. Instead, upon information and belief, Mr. Shrewsbury sought Mayor Pugh's assistance to convince Parsons Brinkerhoff to waive its requirements.

122. Upon information and belief, Mayor Pugh intervened on behalf of Mr. Shrewsbury and attempted to get Parsons Brinkerhoff to keep Roy Shrewsbury/ESI, Inc. as its consultant for the B.I.G. project without the required insurance.

123. Upon information and belief, Parsons Brinkerhoff did not waive its requirement, and severed/terminated its contractual relationship with Roy Shrewsbury.

124. Thereafter, Mayor Pugh unilaterally hired Roy Shrewsbury and ESI, Inc. on behalf of the City of Beckley for the B.I.G. project, and approved payments to him from the FTA grant.

125. The direct contract with the City of Beckley resulted in financial gain for Roy Shrewsbury.

126. Further, Mayor Pugh's intervention and unilateral hire of Roy Shrewsbury occurred after the Mayor had accepted the 10% interest in ATV at the Rock, Inc. and while the Mayor was a business partner of Mr. Shrewsbury.

**IV.
Leased Vehicle
(Count Nine)**

127. The allegations set forth in paragraphs 1-126 are realleged and incorporated by reference.

128. At all times relevant herein, Mayor Pugh was provided and utilized a vehicle leased by the Beckley Sanitary Board.

129. As Chairman of the Beckley Sanitary Board, Mayor Pugh was vested with the authority to negotiate and approve lease vehicles for his personal use.

130. Over the past ten years, Mayor Pugh has leased a Cadillac SRX, Cadillac Escalade, and currently leases and uses an Acura MDX.

131. Mayor Pugh maintains that he needs the leased vehicle in order to perform his duties and responsibilities as Chairman of the Beckley Sanitary Board.

132. Mayor Pugh further maintains that he keeps a mileage log of both his private and public use of the leased vehicle, and has the City of Beckley convert the value of his private mileage use into income for tax purposes.

COUNT NINE
(Public Office for Private Gain)
W.Va. Code § 6B-2-5(b)

133. The allegations set forth in paragraphs 1-132 are realleged and incorporated by reference.

134. It is hereby charged that Mayor Pugh used his public office for his own private gain in violation of W.Va. Code § 6B-2-5(b) by inappropriately utilizing a vehicle leased in the name of the Beckley Sanitary Board, of which he is Chairman, including maintaining inaccurate mileage logs and obtaining improper mileage reimbursements.

135. Although Mayor Pugh maintains that he kept a mileage log of his use of the leased vehicle, the mileage logs over the past two years revealed significant inaccuracies and incorrect classifications of private usage as public use.

136. One such misclassification related to Mayor Pugh's use of the lease vehicle to attend Appalachian Regional Healthcare, Inc. (ARH) board meetings in Lexington, Kentucky.

137. Upon information and belief, Mayor Pugh has been a board member of this entity for several years, and is currently the President of the Board.

138. Although he is a member of the ARH board in his private capacity, Mayor Pugh classified the use of the lease vehicle as public use on multiple occasions.

139. Additionally, Mayor Pugh requested and accepted mileage reimbursement from ARH for his travel to the ARH Board meetings using the leased vehicle.

140. The failure to maintain accurate logs, thereby reducing the amount of private use to be attributable as income, as well as the acceptance of reimbursement for claimed travel resulted in private financial gain to Mayor Pugh.

NOTICE OF HEARING

Notice is hereby given that a **PUBLIC HEARING** will now be held to determine the truth or falsity of the charges against you contained in the foregoing Statement of Charges. In accordance with W.Va. Code § 6B-2-4 and W.Va.C.S.R. § 158-17-1 *et seq.*, the Commission will appoint an independent hearing examiner to 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.

Upon the appointment of a hearing examiner, a specific date, time and place will be established for the Public Hearing.

Dated: 3/29/2012



Theresa M. Kirk
Executive Director