**LINDA CARTER,**

**Grievant,**

**v.**

**DOCKET NO. 98-T&R-038**

**WEST VIRGINIA DEPARTMENT OF**
**TAX & REVENUE/ALCOHOL BEVERAGE**
**CONTROL COMMISSION,**

**Respondent.**

**D E C I S I O N**

Grievant, Linda Carter, protests her dismissal on February 3, 1998, from the West Virginia Department of Tax & Revenue/Alcohol Beverage Control Commission ("ABCC"). Specifically, Grievant alleges she was "wrongfully terminated on February 3, 1998, without warning and without cause, despite satisfactory job performance for 7.5 years." She seeks "reinstatement to position, back pay, conversion of position to a covered position and attorneys fees." Grievant appealed her dismissal directly to level four on February 13, 1998, in accordance with W. Va. Code § 29-6A-4(e), which provides that "an employee may grieve a final action of the employer involving a dismissal, demotion or suspension exceeding twenty days directly to the hearing examiner." Hearing was held at level four on May 12, 1998, and this case became mature for decision on June 15, 1998, thedeadline for the parties' submission of proposed findings of fact and conclusions of law. (See footnote 1)

SUMMARY OF EVIDENCE

Grievant's Exhibits

Ex. 1 -

September 26, 1997 memorandum from Keith Olson, Chief of Staff, to Donald Stemple, Commissioner, ABCC.

Ex. 2 -

October 3, 1997 memorandum from Donald Stemple, Commissioner, to Keith Olson, Chief of Staff with enclosures.

Ex. 3 -

November 13, 1997 memorandum from Keith Olson, Chief of Staff, to Donald Stemple, Commissioner, ABCC.

Ex. 4 -

February 3, 1998 dismissal letter from Donald L. Stemple, Commissioner, to Linda Carter.

Ex. 5 -

Subpoena for Hershel Layne before the Grand Jury of Kanawha County, West Virginia, dated March 13, 1998.

Ex. 6 -

Article from the Atlantic Control States/West Virginia Beverage Journal, April 1998.

Ex. 7 -

Fanny Seiler articles from The Charleston Gazette, April 20, 1998, February 10, 1998, September 23, 1997.

Ex. 8 -

Application for Retail License for Shakers Club, Assn., dated April 9, 1997.

Ex. 9 -

Application for Retail License Renewal for Shakers Club, Assn., dated June 3, 1997.

ABCC Exhibits

Ex. 1 -

Contract for Sale of Shakers Club, Assn.

Ex. 2 -

Application for Retail License for Shakers, dated January 5, 1998.

Ex. 3 -

Incorporation documents for World Enterprises, Inc.

Ex. 4 -

Routine Inspection Report for Shakers, dated January 9, 1998.

Ex. 5 -

Routine Inspection Report for Shakers Club, dated January 5, 1998.

Ex. 6 -

Initial Inspection Report Class “A” for Shakers, dated January 10, 1998.

Testimony

Grievant testified in her own behalf, and presented the testimony of Donald Stemple, Ron Moats, and Hershel Layne. The ABCC presented the testimony of Gary Slater, Jack Lavender, Charles Kegler, Mark Solaro, Ron Coy, Jim Smith, and Donald Stemple.

BACKGROUND

At the time of her termination by Commissioner Stemple, Grievant was employed in a classified exempt secretarial position informally titled within the ABCC as "Enforcement Secretary." In her position, she was responsible for receiving inspection reports from ABCC field inspectors, submitting inspection reports and the violation histories of licensees to her supervisor, preparation of violation notice letters to licensees, coordinating and scheduling violation hearings, and responding to inquiries from members of the public and licensees regarding violation notices. Grievant's supervisor decided the proposed penalty recited in the violation notice letters prepared by Grievant.

On or about September 23, 1997, a columnist published a report in The Charleston Gazette which stated Grievant had accepted a pool table as a gift from Hershel Layne, the owner of an ABCC licensed club operating in Charleston, West Virginia. On September 26, 1997, the Chief of Staff in the

Office of the Secretary of the Department of Tax & Revenue requested in a confidential memo that ABCC Commissioner Donald Stemple investigate the news report regarding the pool table. Commissioner Stemple sought an explanation from Grievant regarding the pool table. Grievant acknowledged that she was a friend of Hershel Layne but advised the Commissioner the Gazette news article was wrong as the pool table had been purchased. Subsequently, Grievant obtained and delivered to Commissioner Stemple two letters relating to the pool table, one a letter from Hershel Layne, and the second, a letter bearing the signature of one Larry Powers, a social acquaintance of Grievant. The two letters indicated the pool table which had been the subject of the article, had been purchased from Hershel Layne by Larry Powers. Upon receipt of the letters, Commissioner Stemple accepted Grievant's explanation of the manner in which Grievant came to possess the pool table and on October 3, 1997, reported back to Secretary Capehart's Chief of Staff that he was closing the pool table investigation. The Commissioner also discussed with Grievant her ethical obligations in her position as a secretary in enforcement in dealing with persons licensed by the ABCC.

During 1997, Ronald Coy, a licensee of the ABCC, operated a club in Morgantown, West Virginia, known as The Shaker's Club. In September, 1997, Ronald Coy was cited for a violation of ABCC regulations based upon his June, 1997, misdemeanor conviction for drug possession. On the evening of December 2, 1997, Mr. Coy personally met Grievant in Morgantown, West Virginia, and discussed with her the possible ABCC penalties for a drug-related offense by a licensee. Mr. Coy was informed the ABCC administrative penalty for drug related offenses by a licensee is license revocation, and that the revocation was required by statute. Mr. Coy believed the statute provided discretion to the Commissioner, and that revocation was not mandated. This meeting was held prior to a scheduled December 3, 1997 hearing on the notice of violation issued to Shaker's based upon Mr. Coy's drug conviction. Grievant was in Morgantown to assist ABCC's counsel with the files in the Coy hearing and several other hearings scheduled for December 3, 1997.

Subsequent to the December 3, 1997, license revocation hearing, Mr. Coy communicated by telephone with Grievant on several occasions regarding the pending ABCC decision, the probable loss of his ABCC license to operate the Shaker's Club and the forfeiture of his beer and alcohol bonds upon the revocation of his license. Subsequent to the December 3, 1997, license revocation hearing, Mr. Coy also discussed with Grievantthe possibility of surrendering his ABCC license and

selling Shaker's. The scope of the conversations between Grievant and Mr. Coy with regard to the forfeiture of bonds and the possible sale of the Shaker's Club are disputed. Grievant denies having pressured or induced Mr. Coy to sell the Shaker's Club to Hershel Layne.

At some time subsequent to the December 3, 1997, hearing, Mr. Coy discussed the sale of the Shaker's Club with Hershel Layne, and Hershel Layne offered to purchase the Shaker's Club in Morgantown from Mr. Coy for $15,000.00, after making inquiry of Grievant regarding the circumstances surrounding Mr. Coy's sale of the club. On or about December 19, 1997, Mr. Coy received a $5,000.00 down payment by check from Hershel Layne, a written contract dated December 19, 1997, for the sale of the Shaker's Club and its equipment to Hershel Layne, and a handwritten note promising an additional $10,000.00 cash payment on the closing of the sale.

Hershel Layne made a $10,000.00 cash payment to Mr. Coy, and took possession of the Shaker's Club in Morgantown, West Virginia on January 1, 1998. Between January 1, 1998, and January 5, 1998, Hershel Layne's employees operated the club, although neither Hershel Layne nor any corporation he owned was licensed by the ABCC to operate the Shaker's club at the time.

Mr. Coy's license to operate the Shaker's Club was delivered by Hershel Layne to Grievant at the offices of the ABCC in Charleston on the morning of January 5, 1998. On January 5, 1998, ABCC agent Mark Solaro was informed of the surrender of Coy's ABCC license for the Shaker's Club in Morgantown. On the evening of January 5, 1998, ABCC agent Mark Solaro undertook an inspection at Shaker's Club, after noticing it was open and operating. Upon entering the club, Solaro found a sale of alcohol had been made to anunderage purchaser, the bartender was an employee of Hershel Layne, and that the club was operating utilizing a Xerox copy of Mr. Coy's license.

On January 6, 1998, a tape recorded statement from Mr. Coy was taken by ABCC agent Solaro and a Morgantown City Police Detective regarding Mr. Coy's sale of the Shaker's Club to Hershel Layne. During the statement, Mr. Coy made allegations to the effect that he had been pressured by Grievant in December, 1997, to sell the Shaker's Club to Hershel Layne. In support of the claim, Mr. Coy alleged Grievant had suggested that Mr. Coy would forfeit his alcohol and beer bonds if his license were revoked but, if he voluntarily surrendered his license before it was revoked, he could sell his club and the bond forfeitures might be avoided. Mr. Coy further alleged Grievant advised him to call Hershel Layne about the sale of the club after advising him that the surrender of his ABCC license might avoid a bond forfeiture. (See footnote 2)

Despite the fact Grievant was not employed in the licensing office of the ABCC during the week of January 5, 1998, she provided assistance to Hershel Layne in the preparation and processing of his application for an ABCC license to be issued to a company owned by Hershel Layne to operate the Shaker's Club in Morgantown. Among other things, Grievant served as notary on the license application form filed with the ABCC by Hershel Layne on January 5, 1998, facilitated the assignment of an inspector to complete a pre-licensing investigation, and arranged to allow Hershel Layne to hand carry a completed license to Morgantown prior to the completion of the inspector's pre-licensinginvestigation, in order that the ABCC inspector on site could formally deliver the new Shaker's Club ABCC license to Hershel Layne in Morgantown immediately upon completion of the pre-licensing investigation report and premises inspection.

On January 9, 1998, ABCC Agent James Smith, who had been assigned to do the pre-licensing investigation for the Shaker's Club license application, advised Commissioner Stemple that a problem existed with Hershel Layne's license application due to the continued operation of the Shaker's Club after the surrender of Mr. Coy's license and prior to the issuance of a new license. Commissioner Stemple advised Inspector Smith to complete his scheduled license application interview and premises inspection in Morgantown, and then return the new Shaker's Club license to Charleston if Smith was not satisfied with the application. Inspector Smith proceeded to Morgantown on January 9, 1998, met Hershel Layne on the premises of Shaker's, completed the questionnaire form, retrieved the new license from Mr. Layne, and returned the license to Charleston with a recommendation the license be denied.

The tape of Mr. Coy's January 6, 1998 statement was picked up in Morgantown on January 7, 1998, by Deputy ABCC Commissioners Ed Hart and Keith Wagner and delivered to Commissioner Stemple in Charleston on January 12, 1998. Commissioner Stemple immediately listened to the Coy tape. While doubting the credibility of Mr. Coy's allegations in light of his prior drug conviction and pending license revocation, Commissioner Stemple submitted the tape to the West Virginia Legislative Commission on Special Investigations for an independent investigation of the allegations on the tape.

Several weeks prior to and independent of the request from Commissioner Stemple to investigate the allegations made on the Coy tape, the Commission on SpecialInvestigations had received a confidential request from an assistant prosecuting attorney with the Kanawha County Prosecuting

Attorney's office to investigate the pool table acquired by Grievant from Hershel Layne. (See footnote 3)

Subsequent to January 12, 1998, the Commission on Special Investigations (CSI) embarked upon an investigation of both the alleged gift of the pool table and the allegations on the Coy tape. As a part of the investigation, CSI Director Gary Slater and CSI investigator Gary Arthur interviewed both Grievant and Hershel Layne.

On or before February 3, 1998, Gary Slater and Gary Arthur reported to Commissioner Stemple that Hershel Layne had admitted to Slater and Arthur that the pool table in the possession of Grievant was a gift from Hershel Layne to her, and that the letters submitted to the Commissioner from Hershel Layne and Larry Powers were false insofar as they suggested the pool table had been purchased by Larry Powers. (See footnote 4) Slater and Arthur also reported to the Commissioner that Grievant had initially denied any involvement in the sale of the Shaker's Club to Layne, but then admitted she had discussed a sale ofthe club with Coy. As noted above, Grievant denies having pressured or induced Mr. Coy to sell the Shaker's Club to Hershel Layne.

Upon receiving the report from Mr. Arthur and Mr. Slater that Hershel Layne had admitted the pool table had been a gift to Grievant, Commissioner Stemple testified he lost confidence in the credibility of the information he had previously received from her regarding the purchase of the pool table, and that he was concerned about public confidence in the impartiality of the agency's enforcement work. Given Grievant's sensitive position in ABCC enforcement and his loss of confidence, Commissioner Stemple decided to terminate her. Commissioner Stemple then met with Grievant on February 3, 1998, advised her of her termination, and delivered his termination letter to her.

After her termination, a published report of Grievant's termination appeared in The Charleston Gazette on February 10, 1998. The newspaper report accurately stated Grievant's termination was based on the Commissioner's loss of confidence in her ability to effectively perform her job duties. The article did not identify the reporter's sources but cited, in part, the language of Grievant's termination letter. The article reported that Commissioner Stemple had declined to discuss the details of the termination with the reporter. The same article also reported Ronald Coy's allegation that Grievant had forced him to sell his club to a Charleston club owner and Grievant's denial of Coy's allegation.

Hershel Layne received a subpoena dated March 13, 1998, to testify before a Kanawha County Grand Jury regarding Grievant. In testimony elicited by Grievant's counsel in the Level IV hearing, Grievant testified she met with the Prosecuting Attorney of Kanawha County following her termination, and that the meeting involved a discussion of the pool table and the Coy allegations.

The April, 1998 issue of a trade publication, the Alcohol Control States/West Virginia Beverage Journal published an article summarizing earlier Gazette articles on Grievant's termination and again reported Grievant's denial of the Coy allegations.

Grievant testified that following her termination, she was offered a job by Hershel Layne in a cellular phone business owned by Layne. Grievant found employment with a detective agency, Sigmon Investigations, subsequent to her termination.

DISCUSSION

Grievant stipulates that she is a classified-exempt employee, thereby serving as an at-will employee. See Roach v. Regional Jail Auth., 482 S.E.2d 679 (W. Va. 1996); Parker v. W. Va. Health Care Cost Review Auth., Docket No. 91-HHR-400 (June 30, 1992). As an at-will employee, Grievant can be terminated for good reason, no reason, or bad reason, provided that she is not terminated for a reason that violates a substantial public policy. Williams v. Brown, 190 W. Va. 202, 437 S.E.2d 775 (1993). See Williams v. Precision Coil, Inc., 194 W. Va. 52, 459 S.E.2d 329 (1995); Harless v. First Nat'l Bank, 162 W. Va. 116, 246 S.E.2d 270 (1978).

Grievant argues that her "liberty" interests represent a substantial public policy entitling her to protection under the ruling of the West Virginia Supreme Court of Appeals in Harless, supra. Grievant contends that she was entitled to a minimal due process hearing concerning her termination since the termination deprived her of her liberty interest in her good name and reputation.

In terminating Grievant, Commissioner Stemple made no allegation she had engaged in illegal conduct and made no charge of illegal or wrongful conduct by her in thetext of his February 3, 1998 termination letter. He merely cited his loss of confidence in Grievant's ability to effectively perform her job duties and responsibilities.

A stigmatizing charge which is not disseminated does not implicate a liberty interest. In Willis v. West Virginia Bureau of Commerce, Office of Miner's Health, Safety and Training, Docket No. 97-MHST-136 (June 9, 1997), this Board considered the termination of an at-will employee who had

been terminated for a cause which did involve an express allegation of unlawful conduct. The Administrative Law Judge who decided Willis concluded that under the current state of the law in this State, a grievant must demonstrate that any reasons given for his termination implicating his liberty interests were disseminated to an extent that the accusations would be "likely to have severe repercussions outside his work world." Wilhelm v. W. Va. Lottery, 198 W. Va. 92, 479 S.E.2d 602 (1996), citing Waite v. Civil Service Comm'n, 161 W. Va. 154, 241 S.E.2d 164 (1977).

On the other hand, public dissemination of a non-stigmatizing "charge" does not implicate liberty interests. Wilhelm is remarkably similar on the facts to this case. In Wilhelm, the West Virginia Supreme Court upheld the dismissal of a Deputy Director of the West Virginia Lottery Commission based upon the Lottery Director's loss of confidence in the ability of the Deputy to effectively perform his duties. The dismissal occurred in the context of the criminal prosecution of the former lottery director and the attorney for the lottery. (See footnote 5) The terminated Deputy, an at-will employee under statute, filed a grievance whichwas dismissed by the Grievance Board for failure to state a claim upon which relief could be granted. Upon appeal, the Circuit Judge reversed the Grievance Board decision and ordered a hearing upon the liberty interest claim. Subsequently, the West Virginia Supreme Court reversed the lower court and upheld the Grievance Board's dismissal of the grievance for failure to state a claim upon which relief could be granted.

In Wilhelm, the court defined the central issue upon appeal as "whether the Lottery's statement concerning 'loss of confidence' in Mr. Wilhelm's ability involves a liberty interest so as to `trigger due process concerns requiring a hearing'." Wilhelm, supra, 479 S.E.2d at 604. The court answered the question in the negative holding that a termination based upon the public employer's loss of confidence in the employee's ability to discharge his job duties does not rise to the level of stigmatization required to foreclose further employment opportunities or to seriously damage an individual's standing in the community. Wilhelm, supra, 479 S.E.2d at 605. Such harm is a prerequisite before an at-will employee can require a due process hearing to protect the employee's liberty interest in his or her good name. See Waite v. Civil Service Commission, 161 W. Va. 154, 158, 241 S.E.2d 164, 167 (1977).

Thus, to demonstrate harm Grievant must show both the existence of a stigmatizing charge and the public dissemination of the charge. Commissioner Stemple's stated reason for discharge, his "loss of confidence," does not sufficiently stigmatize Grievant so as toentitle her to a pre-termination

hearing. Any subsequent dissemination of the loss of confidence rationale is irrelevant if the "charge" itself is not stigmatizing.

Although the basis for Commissioner Stemple's loss of confidence involved doubt about Grievant's credibility regarding whether her pool table was a gift or a purchase from an ABCC licensee, and his concern regarding public confidence in the impartiality of ABCC enforcement efforts, those reasons were not disseminated to the public by the ABCC prior to the filing of this grievance and, therefore, could not implicate Grievant's legitimate "liberty" interests under the United States and West Virginia Constitutions. The disclosure of the Commissioner's underlying rationale compelled in this grievance proceeding or other proceedings of a judicial or quasi-judicial nature cannot be considered in the analysis of whether a liberty interest is impacted by a discharge, because Grievant must have suffered some "injury" to her liberty interest as of the time her action was initiated. See Bishop v. Wood, 426 U.S. 341, 348 (1976); Laureano-Agosto v. Garcia-Caraballo, 732 F.2d 101, 104 (1st Cir. 1984). Willis, supra.

Finally, publication by a newspaper of charges leveled by a private citizen such as Mr. Coy against Grievant cannot be imputed to the ABCC in determining whether the ABCC's stated reason for discharge was stigmatizing. The ABCC did not adopt Mr. Coy's charges as a reason for terminating Grievant. Mr. Coy's allegations were not cited as the basis of any charge made by the ABCC in Grievant's discharge. Moreover, the evidence in this case adduced in the Level IV hearing is that Commissioner Stemple gave no credibility to the allegations made by Mr. Coy regarding the alleged effort by Grievant to pressure Mr. Coy to sell Shaker's to Mr. Layne. In the final analysis, Commissioner Stemple and the ABCC made no charge in dismissing Grievant which rises to a level sufficient to impair the liberty and property interests of Grievant. Grievant was an at-will employee who was terminated without violation of public policy.

## FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant was first employed by the ABCC as a private secretary in the office of the Commissioner in a classified exempt position in August, 1990.

2. Grievant was subsequently reassigned within the ABCC to a secretarial position in the enforcement division where she remained in a classified exempt classification.

3. As a classified exempt employee of the ABCC, Grievant served at the will and pleasure of the Commissioner.

4. Grievant was terminated as an employee of the ABCC on February 3, 1998, by Commissioner Donald Stemple.

5. Commissioner Stemple's stated reason for the termination of Grievant was “loss of confidence in [her] ability to effectively discharge the duties and responsibilities of [her] position.” G. Ex. 4.

CONCLUSIONS OF LAW

1. Commissioner Stemple is authorized to terminate at-will employees of the ABCC under W. Va. Code § 60-2-12, which states:

> The commission shall appoint or employ such assistants and employees as may be necessary to the efficient operation of the department and fix their salaries. All assistants and employees shall be appointed oremployed to serve during the will and pleasure of the commission. (Emphasis added). (See footnote 6)

2. The power of an employer to terminate at-will employees is limited by the rule of law that an employee may not be terminated for reasons which violate public policy. Harless v. First Nat'l Bank, 169 W. Va. 673, 246 S.E.2d 270 (1978).

3. Unless an at-will employee alleges a "substantial contravention of public policy," his or her termination cannot be challenged through the grievance procedure. Wilhelm v. Dept. of Tax & Revenue, Docket No. 94-L-038 (Sept. 30, 1994), aff'd sum nom Wilhelm v. W. Va. Lottery, 479 S.E.2d 602 (W. Va. 1996). See Harless v. First Nat'l Bank, supra,; Dufficy v. Div. of Military Affairs, Docket No. 93-DPS-370 (June 16, 1994); Graley v. W. Va. Parkways Economic Development & Tourism Auth., Docket No. 91-PEDTA-225 (Dec. 23, 1991).

4. A liberty interest is grounded in the due process clauses of the United States Constitution and the West Virginia Constitution which prohibit deprivation of a person's life, liberty or property without due process of law. U.S. Const., Amendment 5; W. Va. Const., Art. III, Sec. 10. A liberty interest has been further defined as "the interest an individual has in being free to move about, live and work at his chosen vocation without the burden of an unjustified label of infamy." Waite v. Civil Service Comm'n, 161 W. Va. 159, 241 S.E.2d 164, 167 (1978). See Bd. of Regents v. Roth, 408

U.S. 546 (1972). Moreover, "a liberty interest is implicated when the State makes a charge against an individual that mightseriously damage his standing and associations in his community or places a stigma or other disability on him that forecloses future employment opportunities." Waite, supra, at 167-68.

5. Harm is a prerequisite before an at-will employee can require a due process hearing to protect the employee's liberty interest in his or her good name. See Waite, supra.

6. Courts are rather uniform in holding that an unexplained termination or discharge from employment does not create a sufficient stigma to invoke a liberty interest protection." Syl. Pt. 5, Freeman v. Poling, 175 W. Va. 814, 338 S.E.2d 415 (1985).

7. To show a requisite degree of harm, a grievant must demonstrate that any reasons given for her termination implicating her liberty interests were disseminated to an extent that the accusations would be "likely to have severe repercussions outside her work world." Wilhelm v. W. Va. Lottery, supra, citing Waite, supra; Willis v. W. Va. Bureau of Commerce, Office of Miner's Health, Safety and Training, Docket No. 97-MHST-136 (June 9, 1997).

8. Disclosure compelled in this grievance proceeding or other proceedings of a judicial or quasi-judicial nature are not considered in the analysis of whether a liberty interest is impacted by a discharge, because Grievant must have suffered some "injury" to her liberty interest as of the time her action is initiated. See Bishop v. Wood, 426 U.S. 341, 348 (1976); Laureano-Agosto v. Garcia-Caraballo, 732 F.2d 101, 104 (1st Cir. 1984). Willis, supra.

9. A termination based upon a public employer's loss of confidence in the employee's ability to discharge his job duties does not rise to the level of stigmatizationrequired to foreclose further employment opportunities or to seriously damage an individual's standing in the community. Wilhelm, supra; Willis, supra.

10. The West Virginia Supreme Court has consistently declined to re-write statutes which assign at-will employment status to the public employment positions created by statute. See Williams v Brown, 190 W. Va. 202, 437 S.E.2d 775 (1993). Only the legislature or the Governor by executive order can add positions to civil service. Logan v. Regional Jail and Correctional Authority, Docket No. 94-RJA-225 (Nov. 29, 1994). Therefore, even if Grievant could demonstrate a sufficient basis for her claim that her termination harmed her liberty interests, the Grievance Board lacks authority to require that her position within ABCC be reclassified as a non-exempt position.

Accordingly, this grievance is **DENIED.**

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7(1998). Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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**MARY JO SWARTZ**

**Administrative Law Judge**

**Dated: July 20, 1998**

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Footnote: 1

*Grievant was represented by W. Bradley Sorrells, Esq., W. Bradley Sorrells, L.C., and the ABCC was represented by John R. Hoblitzell, Esq., Kay, Casto, Chaney, Love & Wise.*

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Footnote: 2

*Grievant denied the Coy allegations and no finding is made here as to their truth or falsity. The tape is relevant for the purposes of this decision only because it played a role in triggering an investigation which led to Commissioner Stemple's decision to terminate Grievant.*

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Footnote: 3

*The request from the Kanawha County Prosecutor's office to the Commission on Special Investigations to conduct an investigation was not a matter of public record until the May 13, 1998, Level IV hearing in this case.*

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Footnote: 4

*CSI Director Gary Slater testified in the Level IV hearing as to the admissions made by Hershel Layne to Gary Slater and Gary Arthur regarding the gift of the pool table to Grievant and the falsity of the letters stating the pool table was purchased. Gary Slater also testified as to the information conveyed to Commissioner Stemple regarding the admissions made by Hershel Layne. The parties stipulated the testimony of CSI Investigator Gary Arthur would be consistent with the testimony of Gary Slater and has been treated as such here.*

*In his testimony, Hershel Layne denied he had admitted to Slater and Arthur that the pool table was a gift. Although Grievant represented Larry Powers was present in the waiting room at the Level IV hearing, Larry Powers was not called to testify on the subject of the pool table or to the validity of the letter presented to Commissioner Stemple.*

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*Footnote: 5*

*Robert Wilhelm had begun working for the Lottery Commission in 1986 and had been appointed Deputy Director of Accounting and Administration in 1989. Between 1989 and 1994 the Lottery Commission received substantial publicity due to the trial and subsequent convictions of its former Director, Butch Bryan, and the Lottery's attorney. Mr.Wilhelm's employment was terminated by Mr. Bryan's successor as Lottery Director, Richard Boyle, on February 8, 1994. See Wilhelm v. W. Va. Lottery, 198 W. Va. 92, 479 S.E.2d 602, 603 (1996).*

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*Footnote: 6*

*The Legislature abolished the office of the West Virginia Alcohol Liquor Control Commissioner and created, in its stead, the position of West Virginia Alcohol Beverage Control Commissioner who thereafter assumed the powers of the Liquor Control Commissioner and the West Virginia Liquor Control Commission. See W. Va. Code § 60- 2-1 (Michies 1997).*