

SHERIFFS' REPRESENTATIVES TO THE WEST VIRGINIA ASSOCIATION OF COUNTIES

By Patti Hamilton, WVACo Exec. Director

The West Virginia Sheriffs' Association has always provided capable leadership to the Board of Directors of the West Virginia Association of Counties. Beginning in June, 2008 at the WVACo Spring Board Meeting, we will be welcoming an entirely new group of sheriffs to the board. In addition to the new board members, Sheriff John Gruzinskas will serve as President of the West Virginia Association of Counties. It's always a challenging position but even more so in Sheriff Gruzinskas' case since he has not previously served as a board member!

Sheriffs newly elected to the WVACo Board of Directors for 2008/2009 are:

John Gruzinskas, Marshall Co., President

Richard Ferguson, Brooke County, Vice-President for Sheriffs

Board Members:

Mike White, Hancock County; Mike Rutherford, Kanawha County; Mickey Metz, Gilmer County; Virgil Miller, Upshur County.

I would be remiss if I didn't thank the Sheriffs' Association for the services of our current board members. We have enjoyed excellent guidance as an association from the active participation of Sheriff Kim Wolfe who served as Vice-President along with Board Members Bill Laird, Ron Barniak, Danny Moore, and Robert Alkire. They will certainly be missed and on behalf of the entire Board of Directors of the West Virginia Association of Counties, I wish them all the best in future endeavors!

Applications Available

Applications are now available for the WV Sheriffs' Youth Leadership Academy and the Criminal Justice Scholarship Program. Please contact Melissa if you need a copy or go to www.wvsheriff.org.

Upcoming Events

- April 22nd = Board Meeting in Parkersburg
- June 28th—July 2nd = National Sheriffs' Association Annual Conference, Indy
- July 19th-25th = WV Sheriffs' Youth Leadership Academy—Kanawha County, Camp Virgil Tate
- September 15th-17th = Annual In-Service for Sheriffs and Tax Deputies—Ohio County, Oglebay Resort

From The Director's Chair

Thank you for all the well wishes for the birth of my son, Blake Anthony. He was born Feb. 13th and is doing great!

Good luck to those of you running for office. Only 10 Sheriffs races throughout the state are uncontested. Unfortunately, we'll be losing a minimum of 24 Sheriffs due to term limits. There are also a few 1st term Sheriffs that are not running for their 2nd term.

Please remember that I am here for you. I encourage you to call upon me for assistance:)

Melissa

CHECK OUT OUR WEBSITE:

www.wvsheriff.org



The Sheriffs' Star

Published by the West Virginia Sheriffs' Association

April 2008

Volume 2, Issue 1

SUPREME COURT GRANTS VICTORY FOR SHERIFFS

Submitted by John R. Teare, Jr., WVSA Legal Counsel

On March 14, 2008, the West Virginia Supreme Court of Appeals ruled that a Sheriff is not absolutely required to sign checks against the County Treasury upon receipt of a pay order from the County Commission. This decision was a clear victory for Sheriff Lonnie Hannah of Mingo County.

According to the Supreme Court opinion, due to the severe flooding in Mingo County in the Spring of 2004, the Mingo County Commission contracted with 263 Towing and Marcum Trucking to perform emergency clean-up work. Both submitted invoices to the County Commission for the work allegedly performed. The invoices were approved for payment by the County Commission, which in turn forwarded checks to the Sheriff for his signature and payment. The Sheriff refused to sign the checks based upon his belief that the invoices were excessive in that they overstated the amount of work actually performed based upon information that federal investigations were being conducted by the Office of the United States Attorney, the Federal Bureau of Investigation, and the Fraud and Abuse Investigations Division of the Inspector General's Office involving criminal violations in connection with the contested invoices.

Marcum Trucking and 263 Towing both filed suit against the Sheriff to compel him to sign the checks. In the Circuit Court the Sheriff responded that he rejected payment of the invoices for good cause and in fulfillment of "his obligation as a law enforcement officer to prevent crime and protect the Mingo County Commission from being victimized." The vendors claimed that the Sheriff could not refuse to sign the checks because he had a ministerial duty to sign the checks once they were issued by the County Commission. The Sheriff defended himself because the County Commission refused his request for legal representation.

The Circuit Court said that it was the Sheriff's legal duty and statutory responsibility as County Treasurer to release payment was clear and unequivocal. The Circuit Court ordered the Sheriff to sign the checks and further ordered the Sheriff to pay prejudgment interest and attorneys fees. Thereafter, the Sheriff retained counsel who filed a motion to vacate the Circuit Court order but the motion was denied. The Sheriff signed the checks as directed by the orders, but did not pay the amounts awarded to the businesses for prejudgment interest and attorney fees then petitioned for appeal in the Supreme Court.

The West Virginia Sheriffs' Association filed an Amicus brief in support of Sheriff Hannah asking the Supreme Court asking the Court to overturn the attorney fees and prejudgment interest sanctions imposed against Sheriff Hannah and to establish a clearly defined rule for resolving these issues in the future. I am pleased to report that the Supreme Court has done just that. The link to the case is: <http://www.state.wv.us/wvsca/docs/Spring08/33382.htm>.

Please refer to the web-site and pay particular attention to points 6, 7, 7 & 8. The syllabus points numbered 7, 7 (there are two number 7s in the original text, likely to be corrected when published) and 8 are expressions of new law in West Virginia.

(article continued on next page "Supreme Court Article")

2008 WVSA Board of Directors

President:

Rodney A. Miller Boone Co. Sheriff 369-7390

Vice-President:

Michael Y. Rutherford Kanawha Co. Sheriff 357-0216

Immediate Past President:

Daniel W. Moore Raleigh Co. Sheriff 255-9195

Secretary:

Ron Barniak Ritchie Co. Sheriff 643-2262

Treasurer:

Lonnie Hannah Mingo Co. Sheriff 235-0300

Board Members-At-Large:

Everett "Ed" Boober Jefferson Co. Sheriff 728-3204

Robert Ferrell Hardy Co. Sheriff 530-0222

Richard Ferguson Brooke Co. Sheriff 737-3660

John Gruzinkas Marshall Co. Sheriff 843-1500

Michael Gissy Lewis Co. Sheriff 269-8251

James Hoskins Wetzel Co. Sheriff 455-2430

Clay Hupp Tyler Co. Sheriff 758-4229

Ken Merritt Wood Co. Sheriff 424-1834

Michael White Hancock Co. Sheriff 564-3911

Kim Wolfe Cabell Co. Sheriff 526-8663



West Virginia Sheriffs' Association

2003 Quarrier St., 3rd Floor

Charleston, WV 25311

(304) 345-2232 / (304) 345-2231

Melissa K. Garretson, Executive Director
melissa@wvsheriff.org

Supreme Court Article Continued

In addition to the new law supporting the Sheriff's discretion when he has a good faith belief that the invoices submitted are not legitimate, the Court also stated:

"The sheriff should have legal representation during the entire review process. Normally, this representation will be provided by the prosecutor, but **if the prosecutor can not serve in this capacity it is incumbent upon the county commission to furnish the sheriff legal counsel and pay for the reasonable cost of such representation.**" (emphasis added).

In short, the Court is not inviting the Sheriff to substitute his judgment for that of the County Commission in fiscal affairs, but in the extraordinary case when the Sheriff has a genuine and good faith belief that the payment sought is not lawful, the Court has identified the steps to be taken to contest the payment of those invoices and has provided for the Sheriff to have legal representation at County Commission expense when challenging illegal invoices.

Note: Sheriff Hannah was represented by Letitia Neese Chafin of Williamson, West Virginia in the Supreme Court. General Counsel John R. Teare, Jr. filed the Amicus brief for the West Virginia Sheriffs' Association.

FUNDRAISING NOTICE

A special thank you to those Sheriffs that participated in the prospect campaign for acquiring new honorary members. Without this program, we would not be able to offer any services to Sheriffs or the citizens of West Virginia.

Please be aware that the WV Sheriffs' Association does NOT raise money through telemarketing.

WV FUSION CENTER DIRECTOR HIRED

Thom Kirk was appointed West Virginia Fusion Center Director on March 15, 2008. Thom has 24 years law enforcement experience including BCI's first Commander and four and a half years as Superintendent. Thom left his position of Assistant Prosecutor of Putnam County, where he prosecuted all major felonies and drug cases, to accept the position of Center Director. He explained that the analyzing of information and turning it into intelligence has been a passion of his as far back as his tour with the US Navy during the Viet Nam conflict and continued into his state police career. That passion is now focused on, and is the mission of, the Fusion Center.

The Fusion Center collects information from all aspects of law enforcement, the Internet, the private sector, business and concerned citizens to establish its worth as intelligence and then contacts the agency or group of citizens who might have an interest in that intelligence or who could benefit from its results. Thom explained that, although he is presently busy building the Fusion Center, he will soon travel to as many locations and organizations as possible explaining the benefits of the Fusion Center and seeking help with its implementation and progression. If you would like to contact Thom, please call him at (304)558-2930 or email him at Thomas.I.kirk@wv.gov.

WV SUPREME COURT DECISIONS IN CRIMINAL CASES

- CRIMINAL, JURY :: Juror who worked with law enforcement properly seated

STATE v. WILLIAM MILLS, JR., No. 33340 (Per Curiam)(October 25, 2007). Affirming an order of the Circuit Court of Kanawha County that imposed sentence upon a jury conviction for delivery of a controlled substance. Rejecting appellant's contention that the trial court erred in refusing to strike a juror for cause. The juror was in uniform as a medic for county emergency services and also served on a volunteer fire department with a potential state witness. Concluding that the appellant failed to demonstrate a disqualifying social relationship, and further failed to specifically inquire as to the nature of the juror's relationships with law enforcement officials, and that the juror was very clear about being able to remain impartial.

- LOCAL GOVERNMENT, JAILS, PROCEDURE :: Regional jail fees

STATE EX REL. REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY v. COUNTY COMMISSION OF CABELL COUNTY, et al., No. 33347 (ALBRIGHT, J.)(Starcher, J., concurring)(November 21, 2007)(Rehearing denied, January 10, 2008). Granting a moulded writ of mandamus in a dispute over payments by a county commission to the regional jail authority to cover the daily cost of housing county inmates. Addressing the Court's authority to issue moulded writ relief in cases having statewide impact and affecting the public interest, and holding that the county commission is obligated to pay assessed per diem charges, but that the regional jail authority must promptly meet and formulate a proposed legislative rule as provided for by W. Va. Code 31-20-10(h), addressing issues of uniformity, calculation of the per diem rate, and further clarifying the documentation surrounding any future rate increases.

- MOTOR VEHICLES, CRIMINAL :: Post-Stump pleas of nolo contendere

STATE EX REL. BAKER v. BOLYARD, Dir. Div. Motor Vehicles, No. 33303 (BENJAMIN, J.)(Starcher, J., dissenting)(Maynard, J., concurring)(October 30, 2007). Affirming an order of the Circuit Court of Greenbrier County that affirmed an administrative decision imposing a six-month driver's license revocation on December 9, 2005, upon receipt of a notification for magistrate court that the defendant entered a nolo contendere plea to first offense DUI. The fact that the plea took place between the Court's prior decision in STATE EX REL STUMP v. JOHNSON, 217 W.Va. 733, 619 S.E.2d 246 (2005) and the May 15, 2006 amendment to W. Va. C.S.R. 91-5-14.1 means that the revocation was automatic upon notification of the nolo contendere plea.

To view the majority opinions in these cases, go to: <http://www.state.wv.us/wvsca/docs/fall07>