

No. 31232 - The Honorable Emmitt S. Pugh, in his official capacity as Mayor of The City of Beckley v. The Policeman’s Civil Service Commission of the City of Beckley, Doug Epling, John White, and James A. Davis, duly appointed commissioners of the Policeman’s Civil Service Commission for the City of Beckley AND Sgt. W.C. Bowden

FILED

December 4, 2003
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Davis, J., concurring:

In this proceeding, the majority has concluded that the Mayor of Beckley has the exclusive right to determine whether a vacancy exists in the Beckley Police Department. The majority has also determined that the Policemen’s Civil Service Commission (hereinafter referred to as “the Commission”) has jurisdiction to investigate a complaint involving a *purported* vacancy in the Beckley Police Department. I fully concur with both findings by the majority and the disposition of this case. I have chosen to write separately to emphasize some matters that I find important to the resolution of the case.

In Syllabus point 3 of *State ex rel. City of Huntington v. Lombardo*, 149 W. Va. 671, 143 S.E.2d 535 (1965), this Court held, in part, that “[a] police civil service commission . . . has only such jurisdiction and powers as are conferred upon it by statute. It has no inherent jurisdiction or powers.” See Syl. pt. 1, *Bays v. Police Civil Serv. Comm’n, City of Charleston*, 178 W. Va. 756, 364 S.E.2d 547 (1987). Under the statutes related to the jurisdiction and powers of the Commission, there is no express or implied authority to

declare a vacancy in a police department. *See* W. Va. Code § 8-14-6 *et seq.* In fact W. Va. Code § 8-14-15 expressly holds that a municipality’s “appointing officer shall notify the policemen’s civil service commission of any vacancy in a position which he desires to fill[.]” The majority has correctly pointed out that, in most instances, the mayor of a municipality has exclusive authority to declare a vacancy in a police department.

Although the Commission does not have authority to declare a vacancy, it does have jurisdiction to hold an investigation to determine whether the failure to declare a vacancy was “made in good faith, not motivated by any political or other improper objective.” *State ex rel. Musick v. Londeree*, 145 W. Va. 369, 377, 115 S.E.2d 96, 100 (1960). *See e.g.*, W. Va. Code § 8-14-18 (“No discrimination shall be exercised ... against, or in favor of, an applicant, eligible, or member of such a paid police department because of his political or religious opinions or affiliations.”). It must be noted, however, that the Commission’s investigative authority is not a license “to conduct fishing expeditions[.]” *West Virginia Advocates for the Developmentally Disabled v. Casey*, 178 W. Va. 682, 685, 364 S.E.2d 8, 11 (1987). Such an investigation must be narrow and confined to the relevant evidence addressing the single issue of whether the failure to declare a vacancy was made consistently with the requirements set forth in *Musick*.

In view of the foregoing, I respectfully concur.