

**No. 31232 – *Pugh, Mayor v. The Policemen’s Civil Service Commission
of the City of Beckley, et al.***

FILED

December 5, 2003

**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

McGraw, J., concurring, in part, and dissenting, in part:

I concur with the majority’s decision that the Policemen’s Civil Service Commission has the authority to investigate whether or not a vacancy exists within the police department. I agree with the majority that Police Commissions have extensive investigatory powers, and that “Police Commissions serve as a counterbalance to the mayor’s broad authority.”

However, I dissent to the majority’s conclusion that the city has unbridled discretion to determine whether or not a vacancy exists. As the majority noted in syllabus point 3, “An underlying purpose of the police civil service statute . . . is to give security to members of paid police departments of municipalities having a population of five thousand or more against the vicissitudes of municipal elections.” (citing syl. pt. 4, *in part, Dougherty v. City of Parkersburg*, 138 W. Va. 1, 76 S.E.2d 594 (1952)). Granting the city sole authority to determine vacancies creates a temptation for the city to eliminate positions when officials simply don’t like the personality or politics of a particular candidate. Because I think that Police Civil Service Commissions should play a larger role in this process, I must respectfully dissent to this aspect of the majority opinion.