

## Haywood County "Toeprints"

August 17, 2013

Vol. #4 Issue #10 (Subject: \* **SPECIAL EDITION** \* **D. Francis, J. Davis, M. Pinkston, J. Ray.**)

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### What's Happening?

The purpose of this newsletter is to inform Haywood County Taxpayers of what transpires at the bi-monthly County Commission Meetings. This newsletter will be written from the perspective of a casual observer, myself. Any opinions expressed will be mine.

**A review - American Jurisprudence (Federal Case Law).** AMJUR MUNCCORP, § 471, 56 Am. Jur. 2d. Municipal Corporations, Etc. § 471. The following Federal Case Law is from Westlaw.

[**Editors Note:** "Westlaw [re: from Wikipedia] is one of the primary online legal research services for lawyers and legal professionals in the United States and is a part of West. In addition, it provides proprietary database services. Information resources on Westlaw include more than 40,000 databases of case law, state and federal statutes, administrative codes, newspaper and magazine articles, public records, law journals, law reviews, treatises, legal forms and other information resources."]

**"Municipalities may acquire and hold title to real property only for legitimate corporate purposes. Because a municipal corporation or county may not expend public funds for a purpose that is not public, such entities have no authority to purchase and hold property for a purpose not connected with a public use."**

Federal Case Law trumps policies and ordinances approved by our county commissioners. Unless North Carolina General Statutes are written in comportment with Federal Case Law, Federal Case Law takes precedence over North Carolina General Statutes. [re: AMJUR MUNCCORP, § 471, 56 Am. Jur. 2d. Municipal Corporations, Etc. § 471, pages 6&7 of <http://haywoodtp.net/pubTP/T130731.pdf> ].

### Cases 10CVD109 and 09CVD1331.

As promised, due diligence was performed. I dutifully pulled both of these case files. The sound you could have heard if you were at the Justice Center was my jaw dropping to the floor.

Both of these cases were COMPLAINT TAX FORECLOSURE, NON JURY. That means foreclosures were initiated by **David Francis** for non-payment of taxes.

To review again, the two properties **David Francis** will be unloading at Monday's county commission meeting are:

- a. Parcel Number – 7687-04-4513 – Case **10CVD109**
- b. Parcel Number – 8608-76-2254 – Case **09CVD1331**

Case 10CVD109 was initiated on 1/25/2010,  
Case 09CVD1331 was initiated on 9/18/2009.

Both of these cases were assigned a "commissioner", and that was **Mark Pinkston** of **Van Winkle** law firm in Asheville.

[**Editors Note:** Astute readers of Haywood County Toeprints will recall the name **Van Winkle** coming up in Public Comments I made at County Commission meetings on Oct. 15, 2012 (where Vice-Chairman **Kirkpatrick** accused me of practicing law without a license), and again on Feb. 4, 2013. All that accusation got **Kirkpatrick** was a grievance filed against him with the North Carolina Bar Association.]

When I had requested Public Information relating to Sheriff's Deeds Foreclosures from the Sheriff's Department, Captain Jason Smiley indicated that they only have records dating back about a year and a half. "Why is that", I asked? He indicated that "**Van Winkle** used to do Sheriff's Deeds Foreclosures, but they were too expensive. So we took over."

We will soon see why.

### Overdue Taxes.

Both of these cases involved overdue taxes.

In the first instance, 10CVD109, the owner(s) were deceased and taxes and interest due at the beginning of the proceedings was \$745.30. At the end of the proceedings, they had grown to \$893.54.

In the second instance, 09CVD1331, initial taxes and interest due started out at \$3,202.09, and grown to a final \$3,471.35.

**Mark Pinkston** was appointed as a COMMISSIONER, and the **Van Winkle** law firm handled the cases. In both cases, **Pinkston** was awarded a "Commissioner fee" for doing his work of \$311.00 and \$629.10, respectively.

**Van Winkle**, also raked in a hefty fee. In the first case, they received \$3,639.88, and in the second case, a whopping \$6,822.05. That's a total of \$10,461.93 in legal fees alone, excluding **Pinkston's** commission fee.

Remember, **David Francis** is unloading both of these properties for a total of \$3,500.00 at Monday's County Commission Meeting. Does anyone smell a rat yet?

### Who paid for these legal fees (and everything else)?

Did you?

What?

In the course of the proceedings of these two cases, both of these property's ultimately met their fate as being sold off in a foreclosure sale at the courthouse door. The first was on 8/26/2011 and the second was 7/19/2010.

Guess who the successful bidder on both of these property's was? Yes, you guessed it, **David Francis**, Haywood County Tax Collector.

[Editors Note: Back then, his title was still Tax Collector].

Guess the amount **David Francis** just happened to bid on each of these properties?

- a. 7687-04-4513 – Case **10CVD109** \$ 6,219.53,
- b. 8608-76-2254 – Case **09CVD1331** \$12,581.85.

What? Those seem awfully strange amounts! They are certainly way above the amount of taxes and interest owed. Remember, this is private property being purchased by Haywood County.

Whose pocket did this come out of, and where did the money go? Well, I sent in a request for public information in to **Julie Davis** on August 16, 2013, but all I got in response was an automated reply saying: "[I will be in meetings all day August 16th. Please contact anyone in the finance office if you need assistance.](#)" I don't know anyone else in the finance department, so I will have to stand by...

Evidently, both these amounts were sent on over to **Van Winkle**, and shown as "Receipts" on the **Final Report of Tax Foreclosure Sale**, signed by both **Mark Pinkston** and **June Ray**. This appears to me to be the elusive "audit" that is **June Ray's** responsibility to perform at the end of each foreclosure sale.

### Double Taxation?

One of the items on the Disbursement schedule by **Mark Pinkston**, and signed off by **June Ray**, was "County Tax".

In the first instance, it was \$893.54 and in the second instance it was \$3,471.35.

What a minute?

The money received by **Mark Pinkston**, presumably from **Julie Davis**, which is presumably our tax money, was turned right around to pay off **David Francis** for back taxes?

Can someone explain this to me? Are we, as taxpayers, paying off back taxes owed by people that had just been foreclosed on?

Here's another interesting coincidence I have yet to figure out. Several months prior to the **Final Report of Tax Foreclosure Sale** for each of these foreclosures, **David Francis** bid an unusually specific amount for these foreclosures,

- \$6,219.53
- \$12,581.85

Then, magically, when **Mark Pinkston** ran through the final numbers in the **Final Report of Tax Foreclosure Sale** for each of these months later (after much additional legal time and fees being accumulated), the totals matched exactly what **David Francis** originally bid. How uncanny is that?

These Disbursements included Court Costs, Mountaineer public notice publishing costs, County Tax, **Pinkston** Commission Fee, **Van Winkle** legal fees, Register of Deed Stamps and Fees, and finally, Miscellaneous fees. All of these magically added up to the original "Receipt".

Does anyone think these guys had this down to a fine science?

### Summary (to date).

All of the following people:

- **David Francis**
- **Julie Davis**
- **Mark Pinkston**
- **June Ray**

should have been aware of AmJur § 471, i.e., the county had no authority to purchase and hold property for a purpose not connected with a public use. And who puts her final stamp of approval on this? **June Ray**.

Why don't you all join me at Monday's County Commission meeting and watch your public officials in action.

**Legend:** If any name is in **bold**, it can't be a good thing. [RINO] Republican In Name Only (i.e. **Kevin Ensley**, **Mitchell Powell**).

[Editors Note: Who is **Mitchell Powell**?]

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