

**KEN HECHLER**  
Secretary of State

**MARY P. RATLIFF**  
Deputy Secretary of State

**JAN CASTO**  
Deputy Secretary of State

Telephone: (304) 558-6000  
Corporations: (304) 558-8000  
FAX: (304) 558-0900  
E-Mail WVSOS@Secretary.State.WV.US



**STATE OF WEST VIRGINIA**  
**SECRETARY OF STATE**  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

**WILLIAM H. HARRINGTON**  
Chief of Staff

**CATHERINE FREROTTE**  
Executive Assistant

**JUDY COOPER**  
Director, Administrative Law

**PENNEY BARKER**  
Supervisor, Corporations

(Plus all the volunteer  
help we can get)

July 16, 1999

**NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE**

**AGENCY: WEST VIRGINIA LOTTERY**

**RULE: NEW RULE, SERIES 4, LIMITED GAMING FACILITY RULES**

**DATE FILED AS AN EMERGENCY RULE: JUNE 23, 1999**

**DECISION NO. 7-99**

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script, appearing to read "Ken Hechler".

**KEN HECHLER**  
Secretary of State

OFFICE OF THE SECRETARY OF STATE

JUL 27 8 31 AM 1999

RECEIVED

**KEN HECHLER**  
Secretary of State

**MARY P. RATLIFF**  
Deputy Secretary of State

**JAN CASTO**  
Deputy Secretary of State

Telephone: (304) 558-6000  
Corporations: (304) 558-8000  
FAX: (304) 558-0900  
E-Mail: WVSOS@Secretary.State.WV.US



**STATE OF WEST VIRGINIA**  
**SECRETARY OF STATE**  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

**WILLIAM H. HARRINGTON**  
Chief of Staff

**CATHERINE FREROTTE**  
Executive Assistant

**JUDY COOPER**  
Director, Administrative Law

**PENNEY BARKER**  
Supervisor, Corporations

(Plus all the volunteer  
help we can get)

**EMERGENCY RULE DECISION**  
**(ERD 7-99)**

**AGENCY: WEST VIRGINIA LOTTERY**  
**RULE: NEW RULE, SERIES 4, LIMITED GAMING FACILITY RULES**  
**FILED AS AN EMERGENCY RULE: JUNE 23, 1999**

- par. 1 The West Virginia Lottery Commission (Commission) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Commission filed this emergency rule with supporting documents with the Secretary of State June 23, 1999 and with the LRMRC June 23, 1999.
- par. 7 It is the determination of the Secretary of State that the Commission has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- WV Code §29-25-5 reads:

*The commission shall propose for promulgation legislative rules in accordance with the provisions of §29A-3-1 et seq. of this code as are necessary to provide for implementation and enforcement of the provisions of this article. Any rules proposed by the commission before the first day of September, 1999, may be by emergency rule.*

par. 9 It is the determination of the Secretary of State that the Commission has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(f) defines "emergency" as follows:

*(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

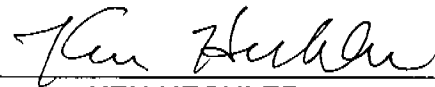
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Commission are as follows:

Casino gaming at one historic resort hotel can only occur after the voters of the county in a primary, general or special election. The West Virginia Lottery Commission cannot predict when such an election will be and what the outcome will be. Identical emergency & legislative rules will cover all time gaps.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . mandated by the Legislature.

par. 14 This decision shall be cited as Emergency Rule Decision 7-99 or ERD 7-99 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Lottery, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_