

Department of Public Safety
(West Virginia State Police)
South Charleston, West Virginia 25309

Executive Office

Colonel John W. O'Rourke
Superintendent

John D. Rockefeller IV
Governor

January 6, 1984

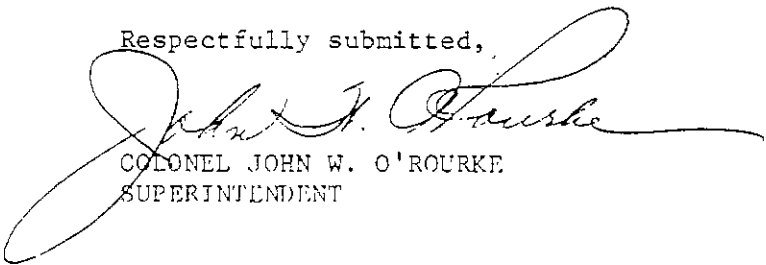
The Honorable A. James Manchin
Secretary of State
Suite 157-K
State Capitol Complex
Charleston, West Virginia 25305

Dear Mr. Secretary:

The Honorable John D. Rockefeller IV, Governor of West Virginia, has approved the attached rules (General Orders) of the West Virginia Department of Public Safety, Series I, Sections 1 through 11, effective January 3, 1984.

Pursuant to West Virginia Code § 29A-3-9 (1982), please accept for filing these approved rules of the West Virginia Department of Public Safety, Series I, Sections 1 through 11.

Respectfully submitted,


COLONEL JOHN W. O'ROURKE
SUPERINTENDENT

JWO'R:pmc

Attachments

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 1-9-84
Administrative Law Division



Department of Public Safety
(West Virginia State Police)
South Charleston, West Virginia 25309

John D. Rockefeller III
Governor

Executive Office
December 28, 1983

Colonel John W. O'Rourke
Superintendent

The Honorable John D. Rockefeller IV
Office of the Governor
State Capitol Building
Charleston, West Virginia 25305

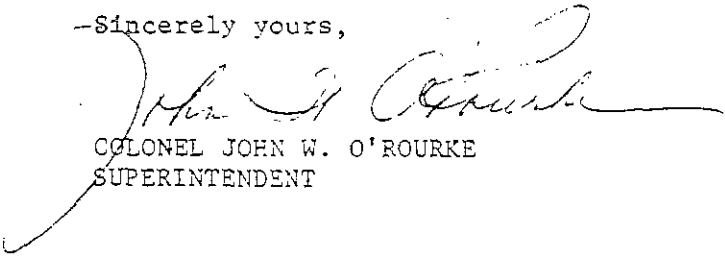
Dear Governor Rockefeller:

Per your letter of September 5, 1982, and pursuant to West Virginia Code § 15-2-25 (1977), the enclosed Administrative Regulations (General Orders), Sections 1 through 11, are submitted for your approval.

Please take note that pursuant to West Virginia Code 29A-3-11 (a) (1982) the regulations were submitted to the Legislative Rule Making Committee on December 18, 1983.

Furthermore, pursuant to West Virginia Code § 29A-3-11, 12 and 13, (1982) the Legislature must pass an act authorizing promulgation of these regulations and such act will then have to be approved by you.

-Sincerely yours,


COLONEL JOHN W. O'ROURKE
SUPERINTENDENT

JWO/keb

Enclosure



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

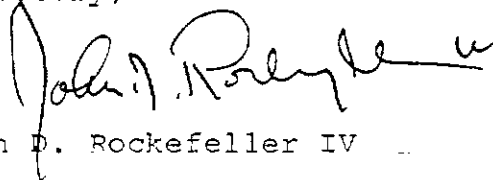
JOHN D. ROCKEFELLER IV
GOVERNOR

January 3, 1984

Dear Colonel O'Rourke,

Pursuant to the West Virginia Code of 1931, as amended, Chapter 15, Article 2, Section 25, I do hereby approve the enclosed Administrative Regulations (General Orders) Sections I through II, of the West Virginia Department of Public Safety, as presented to the Legislative Rulemaking Review Committee.

Sincerely,



John D. Rockefeller IV

Colonel John W. O'Rourke
Superintendent
Department of Public Safety
725 Jefferson Road
South Charleston, West Virginia 25309



Department of Public Safety
(West Virginia State Police)
South Charleston, West Virginia 25309

John D. Rockefeller III
Governor

Executive Office
December 15, 1983

Colonel John W. O'Rourke
Superintendent

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA:

I, JOHN W. O'ROURKE, Superintendent of the West Virginia Department of Public Safety, having been duly sworn, do hereby certify that the attached is a true and correct copy of Series I of the Administrative Regulations, Series I, Sections 1 through 11 of the Department of Public Safety.

LIEUTENANT COLONEL H. C. BEVERLEY
DEPUTY SUPERINTENDENT

FOR COLONEL JOHN W. O'ROURKE
SUPERINTENDENT

Taken, subscribed, and sworn to before the undersigned Notary Public within my County and State aforesaid this 15th day of December, 1983.

My commissioner expires: February 28, 1992

NOTARY PUBLIC



Department of Public Safety
(West Virginia State Police)
South Charleston, West Virginia 25309

John D. Rockefeller III
Governor

Executive Office

Colonel John M. O'Rourke
Superintendent

December 15, 1983

The Honorable Robert C. Chambers
Legislative Rulemaking Review Committee
Capitol Building
Charleston, West Virginia 25305

Dear Mr. Chambers:

Pursuant to West Virginia Code 29A-3-11(a) (1982), enclosed is a brief summary of the content of the legislative rules and description of rules which the West Virginia Department of Public Safety has approved for submission to the Legislature.

1 Incl as

Sincerely,

BY DIRECTION OF THE SUPERINTENDENT

R. C. Beverley

R. C. BEVERLEY, LIEUTENANT COLONEL
DEPUTY SUPERINTENDENT

HCB:mar

COMPARISON OF EXISTING AND PROPOSED
DEPARTMENT OF PUBLIC SAFETY GENERAL ORDERS

The following is a comparison of information contained in current department General Orders as opposed to information contained in the proposed revised General Orders.

General Order Number 1/Series I, Section 1.00

Information previously contained in General Order Number 1 is now contained in Series I, Section 1.00. Series I, Section 1.00 has been expanded to include that section of the Code relating to the department's mission.

General Order Number 2/Series I, Section 2.00

Information previously contained in General Order Number 2 is now contained in Series I, Section 2.00.

General Order Number 3/Series I, Section 2.00

That portion of General Order Number 3 pertaining to the staffing of department Company, District, and Detachment Headquarters and the duties and responsibilities of the staff officers thereof is contained within Series I, Section 2.00. That portion of General Order Number 3 pertaining to the location of Company, District, and Detachment facilities is deemed to fall under the purview of internal management and therefore will be appropriately included in

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 1-9-84
Administrative Law Division

the departmental Operational Policies and Procedures Manual.

Series I, Section 3.00

Information pertaining to the department's rank structure, as contained in Series I, Section 3.00, is not contained in existing General Orders.

General Order Number 4

Information pertaining to authorized department weapons and enforcement equipment, as contained in General Order Number 4, is deemed to fall within the purview of internal management and therefore will be appropriately included in the departmental Operational Policies and Procedures Manual.

Series I, Section 4.00

Information pertaining to the powers of the Superintendent, officers, and members of the department, as contained in Series I, Section 4.00, is not contained within current General Orders.

Series I, Section 5.00

Information pertaining to the limitations imposed upon department members, as contained in Series I, Section 5.00, is not contained in current General Orders.

General Order Number 5/Series I, Section 7.00

Information pertaining to the appointment and/or reenlistment of department members, currently contained in General Order Number 5, will be incorporated in Series I, Section 7.00 (reserved).

General Order Number 6/Series I, Section 6.00

Information pertaining to the transfer of department members, as contained in General Order Number 6, has been incorporated in Series I, Section 6.00. Said section has been expanded to include data pertaining to the department Appeal Board.

General Order Number 7/Series I, Section 8.00

Data contained in General Order Number 7 has been incorporated into Series I, Section 8.00.

General Order Number 8/Series I, Section 8.00

Series I, Section 8.00, currently filed with the Office of the Secretary of State as General Order Number 8.

General Order Number 9/Series I, Section 9.00

Rules governing the conduct of department members, previously contained in General Order Number 9, now contained in Series I, Section 9.00.

Series I, Section 10.00

Series I, Section 10.00 defines penalties for misconduct. This information not contained in current General Orders.

General Order Number 10

Information contained in current General Order Number 10, Internal Investigations, is deemed to fall within the purview of internal management and therefore will be appropriately included in the departmental Policies and Procedures Manual.

Series I, Section 11.00

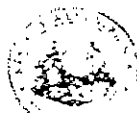
Series I, Section 11.00, currently filed with the Office of the Secretary of State as General Order Number 11.

AMENDMENTS

- 1 Page numbers were added to the index as a result of comments received during the public hearing.
- 2 The language contained in parenthesis after sub-sections 5.04(b), (c), and (d) was added as a result of comments received during the public hearing.
- 3 The word "not" was deleted in sub-section 6.08 and the last sentence of sub-section 6.09 as a result of comments received during the public hearing.
- 4 The language underlined in sub-section 11.04 was added as a result of comments received during the public hearing.
- 5 The format was changed from letters to numbers to comply with the Secretary of State's regulation on filing Administrative Regulations, i.e., § 1.00(a) to 1.01.

ABSTRACT OF PROMULGATION HISTORY

August 16, 1983	Regulations are submitted to Governor Rockefeller pursuant to West Virginia Code §§ 15-2-25 for approval.
August 19, 1983	Governor Rockefeller approves regulations.
August 25, 1983	Superintendent of Department of Public Safety submits for emergency filing [the regulations] in Office of Secretary of State.
August 25, 1983	Secretary of State accepts and files regulations.
September 23, 1983	Regulations are submitted for filing on a permanent basis.
September 23, 1983	Regulations are accepted for filing in Office of Secretary of State.
October 25, 1983	Public hearing held regarding the regulations.
December 18, 1983	Regulations submitted to Legislative Rulemaking Committee.



Department of Public Safety
(West Virginia State Police)
South Charleston, West Virginia 25309

John A. Rockefeller III
Governor

Executive Office

Colonel John M. O'Rourke
Superintendent

December 15, 1983

The Honorable Robert C. Chambers
Legislative Rulemaking Review Committee
Capitol Building
Charleston, West Virginia 25305

Dear Mr. Chambers:

These regulations are required for the government, discipline, and control of the department.

Said regulations will apprise each member of his responsibilities, duties, and obligations as a member.

Additionally, said regulations inform each member that he will be held accountable for a violation of same.

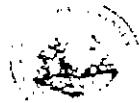
Sincerely,

BY DIRECTION OF THE SUPERINTENDENT

H. C. Beverley

H. C. BEVERLEY, LIEUTENANT COLONEL
DEPUTY SUPERINTENDENT

HCB:mar



Department of Public Safety
(West Virginia State Police)
South Charleston, West Virginia 25309

John D. Rockefeller III
Governor

Executive Office

Colonel John M. O'Rourke
Superintendent

December 15, 1983

The Honorable Robert C. Chambers
Legislative Rulemaking Review Committee
Capitol Building
Charleston, West Virginia 25305

Dear Mr. Chambers:

In compliance with West Virginia Code §§ 29A-3-11 (1982) which requires the filing of a fiscal note concerning submission of legislative rules, please be advised that excluding the cost of printing and distributing the rules to members of the Department of Public Safety, there will be no additional expenses involved in implementing these Administrative Regulations.

Sincerely,

BY DIRECTION OF THE SUPERINTENDENT

H. C. BEVERLEY, LIEUTENANT COLONEL
DEPUTY SUPERINTENDENT

HCB:mar



Department of Public Safety
(West Virginia State Police)
South Charleston, West Virginia 25309

John D. Rockefeller III
Governor

Executive Office

December 15, 1983

Colonel John M. O'Rourke
Superintendent

The Honorable Robert C. Chambers
Legislative Rulemaking Review Committee
Capitol Building
Charleston, West Virginia 25305

Dear Mr. Chambers:

Pursuant to West Virginia Code §§ 29A-3-6 and 9 (1982),
the West Virginia Department of Public Safety hereby approves,
with amendments, Administrative Regulations (General Orders)
1 through 11, inclusive, Series I. (Incl 1)

1 Incl as

Sincerely,

BY DIRECTION OF THE SUPERINTENDENT

H. C. BEVERLEY, LIEUTENANT COLONEL
DEPUTY SUPERINTENDENT

HCB:mar



Department of Public Safety
(West Virginia State Police)
South Charleston, West Virginia 25309

John D. Rockefeller III
Governor

Executive Office
December 15, 1983.

Colonel John W. O'Rourke
Superintendent

STATE OF WEST VIRGINIA:
COUNTY OF KANAWHA

I, JOHN W. O'ROURKE, Superintendent of the West Virginia Department of Public Safety, having been duly sworn, do hereby certify that the attached is a true and correct copy of Series I of the Administrative Regulations, Series I, Sections 1 through 11 of the Department of Public Safety.

LT. COLONEL H. C. BEVERLEY
DEPUTY SUPERINTENDENT

FOR COLONEL JOHN W. O'ROURKE
SUPERINTENDENT

Taken, subscribed, and sworn to before the undersigned Notary Public within my County and State aforesaid this 15th day of December, 1983.

My commission expires: Feb. 23, 1992

NOTARY PUBLIC

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

Department of Public Safety

Chapter 15-Article 2

Series I

(1983) Amended

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Series I--These legislative rules are issued under the authority of West Virginia Code 15-2-25. The scope of said section gives the Superintendent the authority to make and promulgate proper rules and regulations for the government discipline, and control of the department. If a more specific section of the West Virginia Code provides additional authority for a section or subsection of these regulations, the West Virginia Code section will be cited after the regulation. These rules are promulgated on the ___ day of _____, 1983 and are filed on the ___ day of _____, 1983. They become effective on the ___ day of _____, 1983.

Subject: Administrative Regulations (General Orders) for the Government, Discipline, and Control of the Department of Public Safety.

Sec. 1.00--Mission and Operation, West Virginia Department of Public Safety

1.01 This section relates to West Virginia Code 15-2-12.

1.02 The Department of Public Safety shall have the mission of statewide enforcement of criminal and traffic laws with emphasis on providing basic enforcement and citizen protection from criminal depredation throughout the state and maintaining the safety of the state's public streets, roads, and highways.

1.03 Policy and procedure governing the internal management and operation of the department shall be contained within the department's Operational Policy and Procedure Manual.

1.04 Each member of the Department of Public Safety shall be issued a copy of the General Orders Manual and the Operational Policy and Procedure Manual.

1.05 If any portion of the General Orders Manual or the Operational Policy and Procedure Manual is amended, each member shall be issued a copy of the amendment.

1.06 Each member shall ensure that his General Orders Manual and Operational Policy and Procedure Manual contain all current General Orders and operational policies and procedures.

1.07 To ensure the continued efficient operation of the organization, a Department Memorandum or teletype issued by authority of the Superintendent may temporarily amend or rescind any General Order or operational policy or procedure until a revised draft is issued. Department Memoranda shall be issued by the direction of the Superintendent.

1.08 The enlistment, permanent transfer, promotion, demotion, suspension, or discharge of members of the Department of Public Safety shall be effected by Department Special Order. Department Special Orders shall be issued by the direction of the Superintendent.

1.09 Transfers. See Section 6.00.

1.10 Information to members may be disseminated either by Department Memorandum or Department Notice.

1.11 All members of the Department of Public Safety shall adhere to all policies, procedures, rules, and regulations governing the operation of the department. Failure to adhere to any specified policy, procedure, rule or regulation may be punishable by reprimand, demotion, suspension with pay, suspension without pay, or discharge.

Sec. 2.00--Organizational Structure and Duties

2.01 This section relates to West Virginia Code 15-2-2, 15-2-3, and 15-2-4.

2.02 The Superintendent shall serve as the executive and administrative head of the Department of Public Safety. The Superintendent shall hold the rank of Colonel and shall be entitled to all rights, benefits, and privileges of regularly enlisted members.

2.03 The Superintendent shall appoint from the enlisted membership of the Department of Public Safety a Deputy Superintendent who shall hold the rank of Lieutenant Colonel and be next in authority to the Superintendent.

2.04 The term Executive Office shall encompass the following: (1) Superintendent; (2) Deputy Superintendent; (3) Chief of Staff Services; (4) Chief of Field Operations; (5) Inspector; and, (6) such other offices as the Superintendent deems necessary.

2.05 The Deputy Superintendent shall serve as the principal coordinator of Department Field Operations and Staff Services functions. The Deputy Superintendent shall perform other duties as may be assigned by the Superintendent.

2.06 If the Superintendent is unable to discharge the powers and duties of his office, due to illness, disease, injury or any other cause or is absent from the geographical boundaries of West Virginia, the order of succession is as follows:

- (a) Deputy superintendent
- (b) The senior member of the executive office if the Superintendent and Deputy Superintendent are absent.

Whenever the Deputy Superintendent or the senior member succeeds to the Office of the Superintendent he shall exercise all the powers, functions, duties and responsibilities of the Superintendent.

2.07 The Superintendent shall appoint from the enlisted membership of the department the number of officers and members necessary to operate and maintain the Executive Office.

2.08 The Chief of Staff Services shall be responsible to the Superintendent for the coordination of all Staff Services functions and the correlation of activities and duties of Staff Services with those of Field Operations. The Chief of Staff Services shall perform other duties as assigned by the Superintendent and/or Deputy Superintendent.

2.09 The Chief of Field Operations shall be responsible to the Superintendent for the planning, conducting, and monitoring of all field operations and the correlation of activities and duties of Field Operations with those of Staff Services. The Chief of Field Operations shall perform other duties as assigned by the Superintendent and/or the Deputy Superintendent.

2.10 The Inspector shall be responsible to the Superintendent for ensuring that all members and civilian employees adhere to all policy and procedure governing the operation of the department; the inspection of all department owned, leased, rented, or maintained structures; and, the inspection of all departmental records and reports. The Inspector shall serve as the Superintendent's principal point of contact regarding complaints filed

against department members or civilian employees. The Inspector shall submit to the Superintendent recommendations regarding the disposition of complaints. The Inspector shall perform other duties as assigned by the Superintendent.

2.11 The Department of Public Safety shall consist of the number of companies, districts, and detachments as are required for the proper administration of the department. Each company, district, or detachment shall be composed of the number of officers and members the Superintendent deems necessary for the efficient operation of the department.

2.12 Each Company Headquarters Staff shall consist of the Company Commander; Company Executive Officer; Company Logistics Officer; and other members and civilian employees the Superintendent deems necessary.

2.13 Each Company Commander shall be responsible for the planning, conducting, and monitoring of all field operations occurring within his company. Each Company Commander shall be responsible for the correlation of the activities and duties of members and civilian employees assigned to his command with those of Staff Services.

2.14 Each Company Executive Officer shall perform duties assigned by his Company Commander. In the absence of the Company Commander, the Company Executive Officer shall serve as the Acting Company Commander and exercise all the powers, functions, duties, and responsibilities of the Company Commander.

2.15 Each Company Logistics Officer shall perform duties assigned by his Company Commander. In the absence of the Company Commander and the Company Executive Officer, the Company Logistics Officer shall serve as the Acting Company Commander and shall

exercise all the powers, functions, duties, and responsibilities of the Company Commander.

2.16 Each District Headquarters Staff shall consist of the District Commander and other members and civilian employees the Superintendent deems necessary.

2.17 Each District Commander shall be responsible for the planning, conducting, and monitoring of all field operations occurring within his district. Each District Commander shall be responsible for the correlation of the activities and duties of members and civilian employees assigned to his command with those of staff services. Each District Commander shall perform duties as assigned by his Company Commander.

2.18 Each Detachment Headquarters Staff shall consist of the Detachment Commander and other members and civilian employees the Superintendent deems necessary.

2.19 Each Detachment Commander shall be responsible for the planning, conducting, and monitoring of all field operations occurring within his detachments area of operations. Each Detachment Commander shall be responsible for the correlation of the activities and duties of members and civilian employees assigned to his command with those of staff services. Each Detachment Commander shall perform duties assigned by his District Commander.

2.20 The Superintendent shall appoint, from the enlisted members of the department, the number of officers and members he deems necessary to operate and maintain a scientific laboratory; keep records relating to crimes and criminals; coordinate traffic safety activities; maintain a system of supplies and accounting; and, perform other necessary services.

Sec. 3.00--Rank Structure

3.01 This section relates to West Virginia Code 15-2-4 and 15-2-10.

3.02 The rank structure within the membership of the Department of Public Safety shall be as follows: Colonel; Lieutenant Colonel; Major; Captain; Lieutenant; Master Sergeant; First Sergeant; Sergeant; Corporal; Trooper First Class; and, Trooper.

3.03 The Superintendent may appoint from the membership of the department eleven principal supervisors who shall receive the compensation and hold the temporary rank of Lieutenant Colonel, Major, or Captain at the will and pleasure of the Superintendent. Such appointments shall be exempt from any merit standards established by the Promotion Evaluation Board. Any person appointed to a temporary rank shall retain his permanent rank and shall remain eligible for promotion if his permanent rank is below that of Captain. Upon termination of his temporary appointment, the member shall be entitled to the full rights and privileges of his permanent rank and shall remain eligible for subsequent appointment to a temporary rank.

3.04 The appropriate insignia shall be as follows:

Colonel	Silver Eagle
Lieutenant Colonel	Silver Oak Leaf
Major	Gold Oak Leaf
Captain	Two Silver Shoulder Bars
Lieutenant	One Silver Shoulder Bar
Noncommissioned Officers	Black Chevrons of the Appropriate Rank

DPS
Adm. Reg. 15-2
Series 1

Sec. 3.05

3.05 All members of the department shall, while in uniform, wear the insignia appropriate to his rank.

Sec. 4.00--Powers of the Superintendent, Officers and Members

4.01 This section relates to West Virginia Code 15-2-12.

4.02 The Superintendent, each officer, and each member of the Department of Public Safety is empowered to:

(a) Make arrests anywhere within the state of any persons charged with the violation of any law of this state or of the United States, and when a witness to the perpetration of any offense or crime or to the violation of any law of this state or of the United States, may arrest without warrant; to arrest and detain any persons suspected of the commission of any felony or misdemeanor whenever complaint is made and warrant is issued thereon for such arrest, and any person so arrested shall be forthwith brought before the proper tribunal for examination and trial in the county where the offense for which any such arrest has been made was committed;

(b) Serve criminal process issued by any court or magistrate anywhere within this state; and

(c) Cooperate with local authorities in detecting crime and apprehending any person or persons engaged in or suspected of the commission of any crime, misdemeanor, or offense against the law of this state or of the United States or of any ordinance of any municipality in this state; and to take affidavits in connection with any application to the department of highways, department of motor vehicles, and department of public safety of West Virginia for any license, permit or certificate that may be lawfully issued by these departments of state government.

4.03 Members of the Department of Public Safety are created forest patrolmen and game and fish wardens throughout the state to do and perform any duties and exercise any powers of such officers.

4.04 Members of the Department of Public Safety shall at any time be subject to the call of the West Virginia Alcohol Beverage Control Commissioner to aid in apprehending any persons violating any of the provisions of Chapter 60 of the Code of West Virginia.

4.05 Members of the Department of Public Safety shall be empowered to serve and execute warrants for the arrest of any person and warrants for the search of any premises issued by any properly constituted authority, and shall exercise all of the powers conferred by law upon a sheriff except no member shall serve civil process or exercise any of the powers of such officer in civil matters.

4.06 Any member of the Department of Public Safety knowing or having reason to believe that anyone has violated the law may make complaint in writing before any court or officer having jurisdiction and procure a warrant for such offender, execute the same, and bring such person before the proper tribunal having jurisdiction.

4.07 Members of the Department of Public Safety may execute any summons or process issued by any tribunal having jurisdiction requiring the attendance of any person as a witness before such tribunal and make return thereon as provided by law and any return by a member showing the manner of executing such warrant or process shall have the same force and effect as if made by a sheriff.

4.08 Each member of the Department of Public Safety, when called by the sheriff of any county or when the Governor by proclamation so directs, shall have full power and authority within such county, or within the territory defined by the Governor, to direct and command absolutely the assistance of any sheriff, deputy sheriff, chief of police, policeman, game and fish warden and peace officer of the state, or of any county or municipality therein, or of any able-bodied citizen of the United States, to assist and aid in accomplishing the purposes expressed in Chapter 15, Article 2, of the West Virginia Code.

4.09 The Superintendent may assign members to perform police duties on any turnpike or toll road, or any section thereof, operated by the West Virginia Turnpike Commission.

Sec. 5.00--Limitations Upon Members

5.01 This section relates to West Virginia Code 15-2-5, 15-2-12, 15-2-13 and 15-2-18.

5.02 Each member of the department, except the Superintendent, shall execute before entering upon the discharge of his duties a bond with security in the sum of five thousand dollars payable to the State of West Virginia, conditioned upon the faithful performance of his duties. Such bond shall be approved as to form by the Attorney General and to sufficiency by the Governor.

5.03 No member of the Department of Public Safety shall serve civil process.

5.04 No member of the Department of Public Safety shall:

(a) In any way interfere with the rights or property of any person except for the prevention of crime;

(b) In any way become active or take part in any political contest or at any time participate in any political party caucus, committee, primary, assembly or convention, or in any general or special election, except to cast his ballot. (See 9.23, 9.24, and 9.25 for specific prohibitions)

(c) Be detailed or ordered to duty at or near any voting precinct (polling place) where any election or convention is held on the day of such election or convention; nor shall any member thereof remain in, about, or near such voting precinct (polling place) or place of convention, except to cast his vote; (See 9.23, 9.24, and 9.25 for specific prohibitions)

(d) Act as an election official (See 9.23, 9.24, and 9.25 for specific prohibitions); or

(e) In any labor trouble or dispute between employer and employee, aid or assist either party thereto, but shall in such cases see that the statutes and laws of this state are enforced in a legal way and manner.

5.05 No officer or member of the Department of Public Safety shall hire himself to any person, firm, or corporation to guard his private property or demand or receive from any person, firm, or corporation any money or other thing of value as a consideration for the performance of, or the failure to perform, his duties under the regulations of the Superintendent and the provisions of Chapter 15, Article 2, of the West Virginia Code.

5.06 A retired member of the Department of Public Safety shall not, while in retirement status, act under authority of law and specifically those relating to the Department or exercise any of the powers conferred upon active members.

Sec. 6.00--Transfer

6.01 This section relates to West Virginia Code 15-2-20.

6.02 Definitions--For purposes of this section:

(a) Transfer means assignment from one detachment to another detachment.

(b) Permanent means more than 60 days.

(c) Temporary means 60 or less than 60 days.

(d) Intracompany means within the member's Company or within Department Headquarters.

(e) Intercompany means to a different company, into or out of Department Headquarters.

6.03 When any member of the department is to be permanently transferred, the member shall be notified in writing of the proposed transfer at least fifteen calendar days prior to the effective date of such transfer. The Superintendent shall not be required to give notice if the transfer is at the request of or is waived by the member who is to be transferred. The day the notice is given shall not be counted in the 15 days' notice requirement. Oral notification shall suffice to temporarily transfer a member inter or intracompany; oral notification shall be confirmed in writing. The Superintendent may transfer members to meet the operational needs of the department. A transfer may not be made as a disciplinary measure. Company commanders are authorized to initiate intracompany temporary transfers.

6.04 A Department Special Order shall be used to effect a permanent transfer. Department Special Orders shall be issued by the direction of the Superintendent.

6.05 Any non-probationary member of the Department of Public Safety shall have the right to appeal any permanent transfer.

6.06 If any appeal is initiated, the transfer under consideration shall not occur prior to the rendering of the decision of the Department Appeal Board convened in regard to determining the merits of the involved member's appeal. The Department Appeal Board shall be convened in accordance with the provisions of West Virginia Code 15-2-6.

6.07 If the transfer is upheld by the Department Appeal Board, such transfer shall be effective upon the issuance of the Appeal Board's decision. Either party aggrieved by the Appeal Board's decision may appeal the decision to the Circuit Court of Kanawha County within sixty days of receipt of a copy of the board's decision.

6.08 Whenever any member of the department is transferred in excess of sixty calendar days, reasonable and necessary transportation expenses actually incurred in moving the household furniture and effects of the member and his immediate family shall be paid by the department. Such moving expenses shall be encumbered in compliance with special orders. The provisions of this sub-section shall ~~not~~ apply if the transfer is requested by the member.

6.09 If the member transferred owns and resides in a mobile home, the department shall pay reasonable and necessary transportation expenses actually incurred in moving such mobile home provided that such expenses do not exceed the amount which would have been

paid for moving an equivalent amount of household furniture and effects had the member not owned and resided in a mobile home. The provisions of this sub-section shall ~~not~~ apply if the transfer is requested by the member.

6.10 If a transfer for a period in excess of sixty calendar days necessitates the relocation of the involved member's family, the member shall be entitled to a relocation allowance of three hundred dollars which shall be paid by the department. When a member relocates from State owned or leased property to State owned or leased property such payment shall not be made.

6.11 Members of the department shall not be restricted from residing in a county other than that in which they are stationed except that the Superintendent may promulgate by appropriate written regulation to be applied uniformly throughout the department a restriction as to either the number of miles distant from his station which a member may reside or the time necessary under ordinary traffic conditions for a member to travel between his residence and station.

Sec. 8.00--Promotion Evaluation Board

8.01 This section relates to West Virginia Code 15-2-9.

8.02 The Superintendent shall appoint a Promotion Evaluation Board representative of the commissioned and noncommissioned officers within the department.

8.03 The Promotion Evaluation Board shall consist of not fewer than three members. The highest ranking member shall serve as the board chairman. Each member shall have equal voting privileges and all actions of the board shall be by majority decision. The chairman shall appoint a non-board member to serve as a non-voting recorder.

8.04 Before the Promotion Evaluation Board assumes its duties, the Superintendent shall administer the following oath to each board member:

"I, _____, do solemnly swear (or affirm) that I will, without prejudice or partiality, perform the duties hereby imposed upon me and further that I will not divulge the proceedings or results of this Promotion Evaluation Board except by proper authority."

The chairman shall administer the afore oath to the recorder.

8.05 The Superintendent shall furnish the Promotion Evaluation Board with a list of positions to which recommended eligible members will receive promotional consideration. The Superintendent will also inform the board of current and projected operational needs of the department and any specialized skills and/or

knowledge deemed necessary to the proper fulfillment of the duties and responsibilities of the position(s) under consideration as well as any other guidelines deemed appropriate under the circumstances of each position.

8.06 The Promotion Evaluation Board shall prescribe and record merit standards for promotion.

8.07 In regard to field promotions, the Promotion Evaluation Board shall transmit to each company commander a list of field positions under consideration and prescribed merit standards. Each field company commander shall submit to the Promotion Evaluation Board the names of members recommended in accordance with applicable merit standards for promotional consideration to the field positions of Trooper First Class, Corporal, Sergeant, First Sergeant, and Lieutenant. Headquarters senior staff may also submit recommendations for field promotion. Recommendations shall be accompanied by written justification.

8.08 In regard to staff services and/or headquarters promotions, the senior staff shall submit to the Promotion Evaluation Board the names of members recommended in accordance with applicable merit standards prescribed by the Promotion Evaluation Board as pertaining to staff services and/or headquarters positions. Recommendations shall be accompanied by written justification.

8.09 The Promotion Evaluation Board shall evaluate recommended eligible members according to the prescribed merit standards and submit to the Superintendent a ranked listing of members recommended and eligible for promotional consideration. Said ranked listing shall be affirmed as follows:

"The Promotion Evaluation Board, acting under oath and having considered the operational needs of the department; applicable specialized skills and/or knowledge required of the position(s) under consideration; and the individual merits of members recommended and eligible for promotional consideration, finds, by majority decision, the member(s) named on the attached ranked listing(s) best qualified to assume the duties and responsibilities of the position(s) indicated and recommend said member(s) be considered for promotion to the indicated position(s)."

8.10 The Promotion Evaluation Board shall be dismissed, either orally or in writing, by the Superintendent.

8.11 Pursuant to the provisions of West Virginia Code 15-2-9, the Superintendent shall promote one of the top three candidates from the list(s) established by the Promotion Evaluation Board to the position(s) under consideration. Said list so established shall expire by order of the Superintendent or upon filling the positions under consideration.

Sec. 9.00--Rules of Conduct

9.01 This section lists activities or conduct prohibited to Department members. This section relates to West Virginia Code 15-2-25. If a section of the West Virginia Code more specifically relates to a subsection, such section will follow the subsection.

9.02 Using any weapon which has not been authorized for use. 15-2-10(b).

9.03 Using any law-enforcement equipment which has not been authorized for use. 15-2-10(b).

9.04 Alter or change any issued equipment without proper authority.

9.05 Serving civil process. 15-2-12(b)(2).

9.06 Aiding or assisting either party in any labor trouble or dispute between employer and employee except for the enforcement in a legal way and manner, the statutes and laws of West Virginia. 15-2-13.

9.07 No member may in any way interfere with the rights or property of any person, except for the prevention of crime. 15-2-13.

9.08 No member shall refuse to obey a lawful order of his superior officer, irrespective of whether such superior officer shall be a commissioned officer, non-commissioned officer or member of the department senior to himself. Refusal is defined as follows:

(a) Violating or failing to obey any lawful order or regulation;

(b) Failing to obey any lawful order or regulation which it is his duty to perform; or,

(c) Being derelict in the performance of any lawful order or regulation.

9.09 Except as authorized by regulation, law or in the performance of their duty, no member will use, possess, sell, transfer, manufacture, deliver or possess with intent to manufacture or deliver any of the controlled substances listed in Chapter 60A of the West Virginia Code or Section 812, Title 21, of the United States Code.

The prohibitions contained in this subsection shall also apply to counterfeit substances. The definition of counterfeit substance contained in Chapter 60A of the West Virginia Code will apply to this subsection.

9.10 No member shall knowingly and intentionally violate the laws of the United States or the State of West Virginia.

9.11 Drinking an alcoholic beverage while in uniform.

9.12 While in uniform having the odor of an alcoholic beverage on his breath.

9.13 Appearing for or while on duty being under the influence of alcohol.

9.14 Misusing or abusing: any controlled substance which a member is legally in possession of; or an over-the-counter type medication or drug to a degree which renders the member incapable of performing his duty.

9.15 Negligent performance of duty. Negligent performance of duty includes the following:

- (a) Failure to notify a commander or superior officer that the member did not perform a certain duty;
- (b) Failure to perform an assigned or required duty promptly, efficiently, and properly;
- (c) Negligently damaging, destroying or losing Department or West Virginia state property. 15-2-21.
- (d) Allowing a prisoner, arrestee, suspect or anyone under a member's control and custody to escape.

9.16 Willful failure to perform duties. The omission is willful when the failure is with full knowledge of the duty and an intention not to perform it.

9.17 Malingering. Malingering means feigning illness, physical disability, mental lapse or derangement, or intentionally inflicting self-injury for the purpose of avoiding work, duty or service.

9.18 Accepting gratuities. Members will not solicit, demand or receive or agree to receive any money, thing of value or gratuity from any person, partnership, firm or corporation as a consideration for the performance of or the failure to perform

his duties under provisions of law, Department regulations, memoranda, policies and/or procedures. 15-2-13.

9.19 No member shall convert property of the State of West Virginia through a negligent or willful act. Convert means:

- (a) To sell or otherwise dispose of;
- (b) To willfully or negligently damage, destroy or lose;
- (c) To suffer to be lost, damaged, destroyed, sold or wrongfully disposed of.

9.20 No member shall be employed by any person, firm, partnership, corporation or business entity as a personal guard or to guard private property. 15-2-18.

9.21 Absent without proper authority. Absent means every instance in which a member of the Department is, through his own fault, not at the place where he is required to be or not performing the duties he is required to perform, at a prescribed time. 15-2-21.

9.22 Except as provided by law, regulation and in the necessary discharge of official duties, members will not release or divulge to any individual, firm, partnership, corporation, business entity, federal or state agency, their employees, or agents, photographs, fingerprints, records, documents, or other information obtained during a criminal investigation. 15-2-24.

9.23 No member may be detailed or ordered to duty at or within sixty (60) feet of any polling place where an election or convention is held on the day of the election or convention, nor shall any member remain in or within sixty (60) feet of the polling place or place of convention, except to cast his vote.

After voting the member shall forthwith retire from such voting precinct. The prohibitions contained in this subsection may be suspended only by the superintendent, acting superintendent, a company commander or acting company commander for the purpose of protecting life, property or enforcing federal or state law. No member may act as an election official. 15-2-13.

9.24 No member of the department may at any time participate in any political party caucus, committee, primary, assembly or convention, or in any general or special election, except to cast his ballot. 15-2-13.

9.25 No member of the department may in any way become active or take part in any political contest. Thus the following political activities are prohibited:

- (a) Holding a party office;
- (b) Working at the polls;
- (c) Acting as a party paymaster for other party workers;
- (d) Organizing a political party or club;
- (e) Actively participating in fund-raising activities for a partisan candidate or political party;
- (f) Becoming a partisan candidate for, or campaigning for, an elective public office;
- (g) Actively managing the campaign of a partisan candidate for public office;

(h) Initiating or circulating a partisan nominating petition or soliciting votes (i.e., campaigning) for a partisan candidate for public office; and

(i) Serving as a delegate, alternate or a proxy to a political party convention. 15-2-13.

9.26 No member shall abuse the authority vested in him by law, order or regulation. Abuse of authority means:

- (a) Failure to deal with the public in a courteous, kind, patient and respectful manner;
- (b) Failure to discharge duties in an impartial manner;
- (c) Knowingly and willfully disclosing confidential business of the department to individuals not authorized to receive such information;
- (d) Signing any record, return, regulation, order, or other document, knowing it to be false;
- (e) Knowingly making any false statement.

9.27 No member shall strike, draw or lift up any weapon or offer any violence against a member of the Department, except in self-defense.

9.28 Conduct unbecoming an officer. (a) On-duty conduct (b) which specially relates to and affects the administration of the Department and (c) which is of a substantial nature directly affecting the rights and interests of the public. See, Appendix A.

9.29 Gross misconduct. (a) Misconduct which occurs off-duty; (b) is of a substantial nature; and (c) affects directly the rights and interests of the public by bearing directly in a substantial manner on the duties which the employee is required to discharge.

Thus, a member is protected against frivolous, trivial, and inconsequential charges; or charges based on conduct which has no rational nexus with the duties to be performed or the rights and interests of the public.

Sec. 10.00--Penalties for Misconduct

10.01 This section relates to West Virginia Code 15-2-21 and 15-2-25.

10.02 The Superintendent may issue a letter of reprimand, suspend with or without pay, demote in rank, or discharge from the service any member of the Department of Public Safety in accordance with the applicable section of Chapter 15, Article 2, of the Code of West Virginia and any applicable rule(s) or regulation(s).

10.03 A member may appeal the order of suspension, demotion in rank or discharge in accordance with the provisions of West Virginia Code 15-2-6.

Sec. 11.00--Compensation

11.01 This section relates to West Virginia Code 15-2-5.

11.02 The standard work month for the Department of Public Safety shall consist of 181 hours.

11.03 Members of the Department of Public Safety, with the exception of the Superintendent and civilian employees, shall receive the following percentages of the maximum supplement for the equivalent number of hours worked in excess of the standard work month:

<u>EXCESS</u>	<u>TOTAL MONTHLY</u>	
1 - 5 hours	182 to and incl. 186	25%
6 - 10 hours	187 to & incl. 191	50%
11 - 15 hours	192 to & incl. 196	75%
16 or more hours	197 or more	100%

11.04 Credit for a normal workday of 8.5 hours shall be given in computing the number of hours worked per month for any legal holiday (HOD) or compensatory day (CDO) in lieu thereof; any day of annual leave (AWL), sick leave (SIQ), work related disability leave (DL), or administrative leave (AAL) taken within the month for which the computation is made. Credit for a normal workday of 8.5 hours shall also be given in computing the number of hours worked per month for any compensatory day (CDO) taken in lieu of a day off duty lost in either of the two months immediately preceding the month for which the compensation is made. Credit for a normal workday shall not be given for customary days off duty (DOD) or for any make up days (MUD) in lieu thereof.

11.05 Personal knowledge and/or individual monthly activity reports shall serve as the basis for the Superintendent's monthly certification of those members who are eligible for receipt of the monthly supplement set forth above.

APPENDIX A

The following are examples of conduct which justified disciplinary action.

(1) A deputy sheriff used offensive language in the presence of members of an ambulance service wholly without justification; unnecessarily threatened to impose criminal penalties upon the driver of the ambulance; and, the deputy used excessive physical force and personal abuse in the arrest of an individual initially stopped for an alleged traffic violation. (Deputy dismissed)

(2) Deputy sheriff: kicked and knocked down a handcuffed subject; hit an individual with a slap across the side of the face and the head. (Deputy dismissed)