

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #2

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SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Secretary of State TITLE NUMBER: 153

RULE TYPE: Interpretive; CITE AUTHORITY WV Code 29-19

AMENDMENT TO AN EXISTING RULE: YES XX NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 7

TITLE OF RULE BEING AMENDED: Submission of Other Documents for  
Approval to Solicit Contributions for a Charitable Organization

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:                     

TITLE OF RULE BEING PROPOSED:   

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON October 13, 1987 AT 5:00 pm

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Secretary of State  
Administrative Law Division  
State Capitol  
Charleston, WV 25305  
Attn: Rich O. Hartman

THE ISSUES TO BE HEARD SHALL BE  
LIMITED TO THIS PROPOSED RULE

Rich O. Hartman, Dir. Admin. Law

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

TITLE 153  
INTERPRETIVE RULE  
SECRETARY OF STATE  
SERIES 7

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SUBMISSION OF OTHER DOCUMENTS FOR APPROVAL TO  
SOLICIT CONTRIBUTIONS FOR A CHARITABLE ORGANIZATION

**§153-7-1. General.**

1.1. Scope. -- This interpretive rule established the conditions for the exercise of the discretion empowered within the Secretary of State to approve or disapprove solicitation activities.

1.2. Authority. W. Va. Code §§29-19-3(c); 29-19-5(a); 29-19-5(c); 29-19-8; 29-19-15(d); 29-19-9 and 29A-1-2(c).

1.3. Filing Date. -- July-17, 1986

1.4. Effective Date. -- August-17, 1986

**§153-7-2. Other documents prescribed by the Secretary of State.**

2.1. Prior to any solicitation activity each charitable organization shall submit to the Secretary of State a copy of the printed solicitation material and a copy of any script to be used in door-to-door or person-to-person or telephone, radio or television solicitation activities.

**§153-7-3. Governing structure.**

3.1. Charitable organizations must have a valid governing structure. The governing structure of charitable organizations must possess the power to direct and control the actions and conduct of the charitable organization and must, in fact, exercise that power to determine the policies of the charitable organization and control its activities. Members of the governing structure may not abdicate their duty to direct and control by delegating final responsibility to administer the organization. The governing structure shall be an independent body that meets, with a quorum present, at least three (3) times per year. Members of the governing structure of a charitable organization shall not engage in business transactions in which they have conflicts of interest.

**§153-7-4. Related parties.**

4.1. Related parties shall be deemed to exist when an individual, group of individuals, organization and/or corporation (1) serves a charitable organization in a fiduciary capacity or as an agent, officer or employee, and (2) possesses control, ownership or equity (greater than ten percent (10%)) in the business and/or businesses serving the charitable organization. The existence of a family relation, by blood, marriage and/or adoption shall create an irrefutable presumption of related parties, constructive ownership and control.

4.2. All related party transactions involving (1) any officers, agents and employees of a charitable organization and (2) any officers, agents and employees of any professional fund-raising counsel, any professional solicitor or supplier or vendor providing goods or services to the charitable organization shall be fully disclosed in its application for registration and in the solicitation materials.

**§153-7-5. Control.**

5.1. Control exists when an individual, group of individuals and/or corporation has the power to manage, direct, superintend, restrict, regulate, govern, administer or oversee the actions, conduct and/or policies of an organization. It is the existence of the power to control which is decisive and not the form or mode in which it is exercised.

**§153-7-6. Conflict of interest.**

6.1. Conflict of interest refers to a clash between the interests of the charitable organization or the contributors thereto and officers, agents or the employees of the charitable organization, professional fund-raising counsel or professional solicitor. The appearance of impropriety and conflicts of interest should be avoided. The duties of loyalty and fiduciary responsibility of the officers, agents and the employ-

ees of a charitable organization are stricter than the morals of the market place in arms-length activities. The only conditions under which a charitable organization may enter into transactions involving related parties and/or potential conflicts of interest are (1) where the related parties or potential conflict is fully disclosed in the application for registration and solicitation materials; (2) no party receives advantage of their respective position and (3) where the transaction is in all respects fair and reasonable.

**§153-7-7. Reapplication.**

7.1. Any person whose application is denied or

whose certification is revoked may not reapply as a charitable organization for a period of one (1) year from the date of the denial or revocation.

**§153-7-8. Contracts to be filed.**

3.1. Whenever a contract is required to be sent to the Secretary of State by either a charitable organization, professional fund-raising counsel or professional solicitor, such contract shall not be deemed complete unless it includes, either within the body of the contract or attached, the name, address and phone number of the principle contact person for each of the parties to the contract.