

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

Form #5

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FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Oct. 9, 1987, 11:07 A.M.  
ADMINISTRATIVE LAW DIVISION

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Secretary of State TITLE NUMBER: 153

CITE AUTHORITY: §3-1A-6

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE X  
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X, NO \_\_\_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 9

TITLE OF RULE BEING AMENDED: Regulation of Campaign Finance

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: \_\_\_\_\_

TITLE OF RULE BEING ADOPTED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS October 9, 1987

*Ken Hechler*

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Title No. 153  
Legislative Rules  
Secretary of State

SECRETARY OF STATE

Series 9  
Regulation of Campaign Finance

§153-9-1. General.

- 1.1. Scope. -- These rules clarify and provide for implementation of state law relating to the regulation of campaign finance, reporting requirements and prohibited activities. See West Virginia Code §§3-8-1 et. seq.
- 1.2. Authority. -- W. Va. Code §3-1A-6
- 1.3. Filing Date. -- *Oct 9, 1987*
- 1.4. Effective Date. -- *Oct 9, 1987* These rules replace Series 9, effective October 25, 1985.

§153-9-2. Definitions

This section defines terms used in West Virginia Code Article 8, Chapter 3 and terms used in this rule which are not otherwise defined in Chapter 3.

- 2.1. "Election" means any primary, general or special election conducted under the provisions of this code or under the charter of any municipality.
- 2.2. "Candidate" means an individual who:
  - (a) has filed a certificate of announcement under § 3-5-5, § 3-5-7 or a municipal charter;
  - (b) has filed declaration of candidacy under § 3-5-23;
  - (c) has been named to fill a vacancy on a ballot; or
  - (d) has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election to a state, district, county or municipal office or party office to be filled at any primary, general or special election.
- 2.3. "Precandidate" means, for the purpose of this rule, an individual who has filed a precandidacy statement under the provisions of §3-8-5e but has not yet filed a certificate of announcement or declaration of candidacy. This definition does not exclude a precandidate from the requirements and prohibitions relating to candidates in West Virginia Code.
- 2.4. "Ballot issue" means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter

adoption or revision, an increase or decrease of corporate limits, or any other question placed before the voters under the provisions of the West Virginia Code.

2.5. "Political purposes" means advocating or opposing the nomination, election or defeat of one or more candidates, supporting the administration or activities of an established political party or an organization which has declared itself a political party, supporting the administration or activities of a political committee, advocating or opposing the passage or defeat of a ballot issue, determining the advisability of becoming a candidate under the pre-candidacy financing provisions, and supporting the retirement of the debt of a candidate or political committee incurred for any of the above purposes.

2.6. "Political committee" means an association of persons, an organization of any kind, or any two or more persons acting together, wholly or in part, to receive or expend money or other thing of value for political purposes.

This definition shall include but not be limited to political party executive committees, other committees operating in conjunction with a political party or using a political party name, political action committees, and other organizations, whether temporarily or permanently established, using any portion of their funds for political purposes.

This definition shall not include family members or members of a partnership acting together to make joint or individual contributions to a candidate or political committee.

2.7. "Candidate's committee" means a political committee established with the approval of or in cooperation with one precandidate or candidate to "test the waters" and/or to advocate his or her nomination or election to an office in one election cycle. If a candidate directs or influences the activities of more than one committee, those committees shall be considered one committee for the purpose of contribution limits.

2.8. "Ballot issue committee" means a political committee established solely for the purpose of advocating or opposing a ballot issue and making no expenditures to or on behalf of a candidate, political party or other political committee.

2.9. "Treasurer" means an individual designated to act on behalf of a political committee to conduct the financial transactions of the committee. For the purposes of this rule, the term "treasurer" shall be used in place of "financial agent" as defined in §3-8-4 when the individual acts on behalf of more than one candidate or person.

2.10. "Financial agent" is, for the purposes of this rule, an individual designated to act on behalf of one candidate to conduct financial transactions for political purposes on behalf of that candidate.

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2.11. "Solicit" or "solicitation" means the act of asking, suggesting, requiring or inviting, either orally or in writing, a person or persons, organization of any kind, political committee or other entity to give a contribution or other thing of value for political purposes, as defined in this section.

2.12. "Occupation" means the principal work activity which is described by a general term such as teacher, miner, business executive, homemaker, or doctor.

2.13. "Business affiliation" means the name of an individual's employer, or the name of the firm, business or organization, if any, with which a self-employed individual is primarily affiliated.

2.14. "Contribution" means a gift subscription, assessment, payment for services, dues, advance donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether or not conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for political purposes, as defined herein. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected before it is received or returned within 30 days and not used during that time for political purposes. A contribution does not include volunteer personal services provided without compensation.

§153-9-3. Contributions for Primary and General Elections

This section establishes a means for distinguishing between primary and general election contributions, for the purpose of contribution limits established in §3-8-12(f).

3.1. A contribution to a precandidate or precandidate's committee is a contribution in connection with a primary election.

3.2. A contribution to a candidate or candidate's committee is a contribution in connection with a primary election in the following circumstances:

(a) For a candidate for nomination or election in the primary or for nomination by petition, all contributions received on or before the primary election day;

(b) For a candidate nominated in the primary election, a contribution received after the primary which is designated in writing on the financial report, with the consent of the contributor, as a contribution for the primary election, providing the aggregate of all such designated contributions do not exceed the total of unpaid bills, loans or other financial obligations incurred for the primary election;

(c) For a candidate defeated for nomination in the primary election, all contributions received after the primary, not to exceed the total of unpaid primary election expenses;

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(d) For a candidate for nomination in a party convention, all contributions received on or before the day of that convention.

3.3. A contribution to a candidate or candidate's committee is a contribution in connection with a general or special election in the following circumstances:

(a) For a candidate nominated in a primary election or party convention, all contributions, except those designated as primary contributions under 3.2(b), received after the nomination and not later than the date when all debts, loans or other financial obligations of the general election campaign have been repaid;

(b) For a candidate appointed to fill a vacancy on the general or special election ballot by a party executive committee, all contributions received in connection with the election and not later than the date when all debts, loans or other financial obligations of the general election campaign have been repaid.

3.4. A contribution to a political committee, other than a candidate's committee, acting for political purposes in both the primary and general election is a contribution:

(a) In connection with a primary election if the contribution is received on or after the last Saturday in March of a non-election year and by the date of the primary election in the following calendar year (for example, from March 28, 1987 to May 10, 1988); and

(b) In connection with a general election if the contribution is received after the date of a primary election and not later than the day before the last Saturday of March of the following calendar year (for example, from May 11, 1988, to March 24, 1989).

3.5. A contribution to a political committee acting for political purposes only in one election is a contribution in connection with that election.

#### Section 153-9-4. Contribution Limitations and Sources

This section clarifies the application of the limitation on contributions established in §3-8-12(f) and the prohibition on corporate contributions in §3-8-8.

4.1. Limitations on contributions to candidates for national elective office (including President, Vice President, U. S. Senate and U. S. House of Representatives) are established in Chapter 14, Title 2 of the United States Code and the Code of Federal Regulations and are not subject to regulation by the states. The Federal Election Commission regulates federal campaign activity. [FEC, 999 E. Street, N.W., Washington, D. C. 20463 Tel. (800)-424-9530]

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4.2. Aggregate contributions from one person to a candidate or political committee in connection with a primary election may not exceed \$1,000. Aggregate contributions from one person to a candidate or political committee in connection with a general or special election may not exceed \$1,000. The term person is defined by West Virginia Code § 3-8-4.

4.3. A contribution made by a business licensed as a sole proprietorship is a contribution made by the owner of that sole proprietorship. The aggregate contribution limits apply to all contributions to a candidate or political committee made by that owner, whether from personal or business funds.

4.4. A contribution made by a business licensed as a partnership is a contribution which shall be apportioned to the ownership interest of the partners. The aggregate contribution limits apply to contributions to a candidate or political committee made by each partner whether from personal funds or from the contributor's share of partnership funds.

4.5. A husband and wife may each contribute \$1,000 to the same candidate or political committee in connection with the same election, regardless of the source of family income.

4.6. A contribution made by check drawn on a joint personal account shall be attributed to the person who signed the check, or equally to the persons signing the check, unless otherwise specified in writing by the contributor.

4.7. Minor children (children under 18 years of age) may contribute up to \$1,000 to a candidate for an election if:

- (a) The decision to contribute is made knowingly and voluntarily by the minor child;
- (b) The funds, goods, or services contributed are owned or controlled exclusively by the minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and
- (c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual.

4.8. When a contributor designates all or part of a contribution for the benefit of a particular candidate and makes that contribution to a political committee acting with the approval or control of that candidate, the contribution shall be deemed to be an indirect contribution to the designated candidate and shall be subject to the aggregate contribution limits for that candidate.

4.9. A candidate or candidate's committee established for one primary and general election may transfer excess campaign assets to the same candidate's campaign or committee for a subsequent

election year, and such a transfer shall not be limited by aggregate contribution limits.

4.10. The aggregate contribution by a person to a ballot issue committee is not limited; and corporate contributions to a ballot issue committee are not prohibited.

4.11. Transfers of contributions by a political committee established as a federal committee under the regulation of the Federal Election Commission (FEC) from the committee's federal account to a state account shall not be made for the purpose of allowing any contributor to exceed the maximum contribution per election to the state account.

4.12. If a candidate or candidate's committee has excess campaign funds at the time of filing the post election financial report, no further contributions may be accepted until the candidate files a precandidacy statement for a subsequent election.

4.13. If a candidate or candidate's committee has debts, outstanding loans or unpaid bills at the time of filing the post election financial report, further contributions may be accepted only until an amount sufficient to repay such debts and outstanding loans has been received.

#### §153-9-5. Lawful Expenditures

This section clarifies the meaning of certain permissible expenditures of money and other things of value for election expenses for purposes enumerated in W.Va. Code §3-8-9.

5.1. Funds belonging to or received by a candidate or political committee for political purposes may be used to employ persons to perform those functions enumerated in W.Va. Code §3-8-9, either on a full-time, part-time, or temporary basis, providing the provisions of Title 153, Code of State Rules, Series 10, are complied with.

5.2. "Necessary traveling and hotel expenses" shall include mileage at a rate not to exceed twenty-five cents per mile or direct charges for transportation and itemized food and lodging costs incurred specifically for the purpose of campaigning or conducting the organizational, political or financial business of a political committee or candidate's campaign. The term shall not include the purchase cost of any vehicle, or expenditures for traveling and hotel expenses incurred for activities which result primarily in personal benefit and are not directly and specifically undertaken for political purposes.

5.3. No money or thing of value derived from contributions received by a candidate or political committee may be paid or given to any person, except:

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(a) as lawful payment for goods provided, services rendered, or reimbursement of expenses incurred for political purposes;

(b) as food, entertainment or costs incidental to a fund-raising event or public meeting; or

(c) as printed campaign promotional items of nominal value which clearly identify the candidate or party.

5.4. A candidate may be reimbursed from contributions received for lawful election expenses paid from the personal funds of the candidate, providing receipts are retained and those itemized expenditures are reported as required by law.

5.5. No candidate may receive any payment of money or other thing of value for personal use from funds solicited or received for political purposes on his or her behalf, except as reimbursement as provided in Section 5.4.

§153-9-6. Disposing of Excess Campaign Assets

This rule clarifies the methods of lawfully disposing of excess campaign assets.

6.1. Excess campaign assets are those monies, materials, equipment or other things of value derived from contributions which are:

(a) Remaining in the possession of the precandidate or pre-candidate's committee at the conclusion of precandidacy when the precandidate decides not to become a candidate;

(b) Remaining in the possession of the candidate or candidate's committee at the conclusion of the campaign and after debts, loans and other liabilities are repaid; or

(c) Belonging to a political committee which wishes to discontinue activity and dissolve.

6.2. Excess campaign assets may be lawfully:

(a) Transferred from a candidate's committee organized for one election year to the same candidate's committee for a subsequent election year, providing that candidate has filed a precandidacy statement and a statement of organization for the new committee before the transfer is made;

(b) Distributed for a lawful election expense enumerated in W.Va. Code § 3-8-9 by making a contribution to one or more political party committees, other political committees or candidates; or

(c) Returned on a pro-rata basis to each contributor.

6.3. No person may receive excess campaign assets for personal economic benefit or use.

6.4. No candidate, financial agent or treasurer may distribute excess campaign assets through personal gifts, promotional items, or other expenditures not authorized by W.Va. Code § 3-8-9.

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§153-9-7. Receiving, Distributing and Reporting Contributions and Expenditures

This section clarifies the handling and reporting requirements set forth in W.Va. Code §§ 3-8-2 through 3-8-7.

7.1. The treasurer of a political committee receives all contributions and disburses all funds, and it is unlawful for a person or persons other than the treasurer to receive and disburse funds without the treasurer's knowledge and participation.

7.2. A candidate who does not appoint another person as financial agent or organize a candidate's committee and appoint a treasurer at least 60 days prior to the election at which he or she is to act shall be deemed to be the financial agent for his or her own campaign.

7.3. A financial report shall include all financial transactions occurring during the accounting period just completed, and any other financial transactions which have not been reported previously.

7.4. For the purpose of financial accounting and reporting, an election cycle is divided into accounting periods. The first accounting period begins on the date of the first financial transaction. The last day of each accounting period is the day before the next financial report may be filed. Accounting periods end on the following dates:

- (a) The day before the last Saturday in March of each year;
- (b) The eleventh day before the primary election;
- (c) The twenty-fourth day after the primary election;
- (d) The eleventh day before the general election; and
- (e) The twenty-fourth day after the general election.

7.5. For the purpose of reporting contributions, a contribution occurs on the date the check, cash or other thing of value is received by the treasurer. No person acting as agent for the candidate, treasurer or committee shall knowingly withhold a contribution from the treasurer to prevent the reporting of the contribution until a later reporting period.

7.6. For the purpose of reporting unpaid bills, a liability is incurred on the date a bill for goods received or services rendered is received by the treasurer.

7.7. For the purpose of reporting expenditures, an expenditure is made on the date the treasurer writes the check or transfers cash to any person to pay for goods or services rendered. No transfer may be made to an intermediary to avoid reporting an expenditure in a particular reporting period.

7.8. Contributions received and expenditures made in connection with a fund raiser held jointly by two or more

political committees other than candidate committees shall be apportioned equally to each committee and reported separately by each committee.

§ 153-9-8. State and Local Activity by Federal Committees

This rule clarifies the responsibilities and state reporting requirements of a political committee organized under the rules of the Federal Election Commission when that committee makes contributions to or direct expenditures on behalf of or in opposition to state or local candidates, political committees or ballot issues.

8.1. Nothing in this rule shall be construed to exempt a federal committee from the requirements of West Virginia Code §§ 3-8-1 et. seq. as to monies or other things of value received and disbursed for election expenses on behalf of state and local candidates, political committees and ballot issues.

8.2. When a federal committee maintains a state account, the treasurer shall not place in its federal account funds which have been designated by the contributor for use in state, district, county, and municipal election activities. Such funds shall be placed directly into the state account, and shall be subject to state reporting requirements and contribution limits.

8.3. The treasurer of a federal committee may not knowingly transfer into a state account or disburse on behalf of a state or local candidate or political committee any portion of an individual contributor's contribution which exceeds \$1000 per election.

8.4. A federal committee which maintains a state account may comply with state reporting requirements by filing reports on the forms prescribed by the Secretary of State under the rules and at the times required by West Virginia Code and the Code of State Regulations.

8.5. A federal committee which maintains only a federal account may comply with state reporting requirements by filing with the applicable federal report an addendum itemizing in the manner required by West Virginia State Code and the Code of State regulations:

(a) all contributions and loans received from West Virginia residents;

(b) all liabilities incurred or expenditures made to or on behalf of any state or local candidate, political committee or ballot issue; and

(c) an oath given by the treasurer that the addendum contains a true and correct report of all financial transactions relating to state and local candidates, political committees, or ballot issues in West Virginia.

§ 153-9-9. Solicitation for Political Purposes

This section clarifies lawful and unlawful practices relating to solicitations for political purposes.

9.1. No person may lawfully solicit and accept funds for political purposes on behalf of any individual before that individual becomes a precandidate or a candidate as defined herein.

9.2. No person may lawfully solicit and accept funds on behalf of any political committee before that committee files a statement of organization and the appointment of a treasurer.

9.3. A person who solicits funds to retire a debt incurred for political purposes by a candidate or committee during a previous primary or general election is soliciting funds in connection with that campaign for nomination or election.

9.4. A solicitation which is broadcast by radio or television or published in a newspaper or other publication of general circulation shall not be deemed to violate any prohibition against solicitation of the members of specific groups.

9.5. A solicitation which is conducted randomly by such means as bulk mail to boxholders, broad literature distribution in a geographic area, or random-number telephone solicitation shall not be deemed to violate any prohibition against solicitation of the members of specific groups, providing solicitations of members of prohibited groups are not knowingly and purposely included in the random solicitation.

9.6. A solicitation directed to individuals by name shall not be deemed to violate the prohibition against solicitation of public employees if that solicitation prominently contains the words "Please disregard if you are a public employee" or words to that effect, providing solicitations of members of prohibited groups are not knowingly and purposely included in the solicitation.

9.7. A solicitation specifically on behalf of one or more candidates for President, Vice President, U. S. Senate or U. S. House of Representatives is governed by the United States Code and the Code of Federal Regulations and is not subject to regulation by the state.

9.8. A solicitation within the state by a federal committee is subject to West Virginia Code and the West Virginia Code of State Rules, if all or part of any contribution received as a result of the solicitation is used to support one or more candidates for state, district, county or municipal office in West Virginia.