



KEN HECHLER
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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

NOTICE OF AGENCY ADOPTION

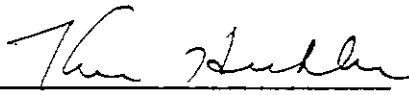
AGENCY: SECRETARY OF STATE

RULE TITLE: ELECTION EXPENDITURES

RULE TYPE: LEGISLATIVE

THE ATTACHED RULE CONSTITUTES THE OFFICIAL RULE ADOPTED BY THE
SECRETARY OF STATE

ON SEPTEMBER 15, 1986 AND FILED WITH THE SECRETARY OF STATE.


Ken Hechler, Secretary of State

FILED
1986 SEP 15 PM 12:03
SECRETARY OF STATE

NICK J. RAHALL, II
4TH DISTRICT, WEST VIRGINIA

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INTERIOR AND INSULAR AFFAIRS

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CHAIRMAN:
MINING AND NATURAL RESOURCES
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Congress of the United States
House of Representatives
Washington, DC 20515

August 22, 1986

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The Honorable Ken Hechler
Secretary of State
State of West Virginia
Charleston, West Virginia 25305

Dear Ken:

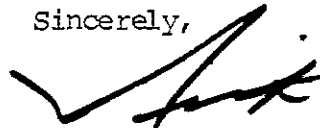
Thank you for your recent letter concerning rules and regulations governing payment of election workers. I certainly appreciate you bringing this information to my attention.

As always, I support any effort to further the practice of fair and equitable elections, and look forward to working with you and the Federal Election Commission on this matter.

If I may be of assistance to you with this effort, please do not hesitate to call on me personally.

With warm personal regards, I am

Sincerely,



NICK J. RAHALL, II
Member of Congress

NJR/jak

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 8, 1986
ADMINISTRATIVE LAW DIVISION

PROPOSED

West Virginia Legislative Rules
Secretary of State
Series _____

Title: Election Expenditures

Section 1. General

1.1 Scope - These legislative rules regulate the employment of election workers and regular campaign staff, rate of payment, method of payment, reporting requirements and forms utilized for compliance. These legislative rules apply to all municipal, county, state or national elections conducted in this state.

1.2 Authority and Related Code Citations - WV Code §§ 3-1A-6; 3-8-1; 3-8-11; 3-8-12; 3-9-12; 3-9-13; 3-9-16 and WV Supreme Court of Appeals Order No. 16884 Rogers v. Hechler filed July 9, 1986.

1.3 Filing Date

1.4 Effective Date

Section 2. Policy

The Legislature through WV Code §§ 3-1A-6(d); 3-8-1; 3-8-11(c); 3-8-12(e); 3-9-12; 3-9-13 and 3-9-16 clearly address the intent of the Legislature to prevent the buying and selling of votes. Pursuant to statutory authority, it is the policy of the State Election Commission and the Secretary of State that unreasonable, excessive and grossly disproportional expenditures of money in relation to services rendered represents the buying of votes or influence to obtain a public office. The following rules are established to carry out this policy.

Section 3. Definitions

3.1 Regular campaign staff - means an individual employed by a candidate, party committee, or political action committee who is paid a regular salary out of which is deducted withholding tax and social security obligations.

3.2 Election worker -- means an individual employed by a candidate, party committee, or political action committee out of whose pay no withholding of tax or social security are deducted.

3.3 Committee -- means an association of persons organized to advocate the election or defeat of any candidate or the passage or defeat of any ballot issue, and who are required to file a statement of organization pursuant to WV Code §3-8-4 no later than 60 days before the election.

3.4 Candidate's authorized committee -- means a committee organized for the support of one candidate with the knowledge and consent of that candidate.

3.5 Party committee -- means the county, district or state executive committee of a political party.

3.6 Political action committee -- means a committee organized by one or more individuals, corporations, associations, labor unions, or organizations for the purpose of advocating or opposing the nomination or election of one or more candidates or the passage or defeat of one or more ballot issues.

Section 4. Exceptions

Contracted services with firms licensed to do business in the State of West Virginia are exempt from these regulations. Provided however, that such services which offer election workers on election day do not pay more than \$35 per day for such workers. When any candidate or committee uses a contracted service firm to provide election workers, such election workers will be calculated as part of the total workers allowed for that candidate or committee pursuant to Section 7.

Section 5. Payment of Election Workers

5.1 An election worker's pay may not exceed a total of \$35 per day regardless of the source or sources of the payment or the hours worked in any given day.

5.2 Payment shall be by check for any or all services provided by any election worker.

5.3 Any check issued for payment to any election worker shall clearly indicate the name of the organization or person issuing the check, and the name and social security number of the person to whom the check is issued.

5.4 No check may be issued to any election worker before the election worker has submitted to the candidate, party committee, or political action committee an itemized statement on a form prescribed by the Secretary of State showing the specific work performed, the times and dates of the work and the amount of pay to be issued by the candidate, party committee, or political action committee to the election worker for the work reported.

5.5 The candidate, party committee, or political action committee shall attach all itemized statements, upon which payment was made, with the financial statement, for the reporting period during which the check was issued.

5.6 The candidate, party committee, or political action committee shall report to the Internal Revenue Service at the end of each calendar year the names of all election workers employed during the past calendar year and the total amount paid to each election worker and any other information which the Internal Revenue Service may require to determine the tax liability of any election worker.

Section 6. Payment of Regular Campaign Staff

6.1 Regular campaign staff may be paid in excess of \$35 per day, but such pay may not exceed that which is reasonable and fairly commensurate with similar services rendered in the private sector.

6.2 Payment shall be by check for any or all service provided by any regular campaign staff worker.

6.3 Any check issued for payment to any regular campaign staff worker shall clearly indicate the name of the organization or person issuing the check and the name and social security number of the person to whom the check is issued.

6.4 The candidate, party committee, or political action committee shall file with their financial statement the job title, description of duties, rate of payment per day, name and social security number of each regular campaign staff worker employed during the reporting period covered by the financial statement.

Section 7. Employment of Election Workers

7.1 Each candidate or candidate's authorized committee, but not both, may employ election workers solely for the candidates personal campaign.

7.2 Under no circumstances may a candidate or candidate's authorized committee employ directly or indirectly on election day in excess of one worker per each precinct within the area the candidate is seeking to represent.

7.3 A candidate or candidate's authorized committee may not make indirect contributions to other candidates or committees by having paid election workers to drive voters, distribute literature or perform any other task in behalf of another candidate where the value of the indirect contribution plus any other contributions would exceed \$1000.

7.4 Each party committee may employ election workers.

7.5 Under no circumstances may any party committee or combination of committees of the same political party employ on election day in excess of one election worker per precinct within any county.

7.6 Each political action committee may employ election workers.

7.7 Under no circumstances may any political action committee employ on election day in excess of one election worker per precinct within the area the candidate or candidates supported or opposed by the political action committee, seek to represent.

7.8 Each political action committee shall report the amount of expenditures made on behalf of each candidate or to promote the defeat of a candidate.

Section 8. Forms

All forms necessary for the complying with these rules shall be prescribed by the Secretary of State and available from the Secretary of State's office and county clerk's office.

Section 9. Severability

If any provision of these rules or the application to any person or circumstances shall be held invalid, such invalidity shall not affect the provision or application of these regulations which can be given effect without the invalid provision or application and to this end the provisions of these regulations are declared to be severable.

KEN HECHLER
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September 2, 1986

Donald R. Bare, Chairman
Raleigh County Democratic
Executive Committee
Rt. 9, Box 91D
Beaver, WV 25813

Dear Donald:

Thanks for your note of August 26, 1986 sharing the Raleigh County Democratic Executive Committee's comments on the proposed administrative regulations promulgated to implement the Supreme Court decision limiting the amount of money that can be paid for certain election functions.

The decision did set a maximum of \$50.00 per day for election workers. The State Election Commission recommended that the amount be dropped to \$35.00 when they compared the fact that election commissioners and clerks who work inside the house are paid a maximum of \$50.00 for about a 14-hour day. The specific concern that the State Election Commission had was that it would be more difficult to get qualified workers in the house if they were competing with the political parties or specific candidates who could be pay substantially more.

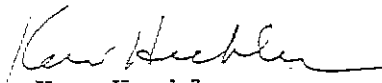
I agree with your comment concerning the \$50.00 pay for commissioners and poll clerks. It does seem to be very low for an extraordinarily hard day's work. Oddly enough, though, as we were looking at the Legislative program for last year we polled five or so of the contiguous states and found out that our \$50.00 per day is not at all low relative to the average. To the contrary it is higher than most states.

Donald R. Bare
September 2, 1986
Page Two

It is our reading of the Supreme Court decision that we must have a detailed financial reporting by the individuals who are providing transportation to voters to and from the polls. Sharing your concern that we should not over-bureaucratize the reporting requirements, the State Election Commission dropped the original requirement that each voter be reported by name and instead went to a general mileage per voter requirement.

All your comments will be taken into consideration when we work on the final regulations. It is my hope to have the process completed by mid-September. At that time we will send you a final copy. Again, thanks for your comments.

Sincerely,


Ken Hechler
Secretary of State

August 26, 1986

The Honorable Ken Hechler
Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Ken,

Thanks for your letter of August 19, 1986, relative to the concerns of the Raleigh County Democratic Executive Committee. I especially appreciate the copy of the West Virginia Supreme Court of Appeals decision.

I have read your letter and the Supreme Court decision carefully. In addition, the Raleigh County Democratic Executive Committee in its meeting on Thursday, August 21, has carefully considered all aspects of the proposed regulations, again, tempered by the provisions contained in Supreme Court decision.

We respect the need for regulations which will prevent abuses by anyone during the election process. Just as you, we want elections in Raleigh County to be clean and honest. We intend to obey the law and the regulations promulgated by the Election Commission.

We continue to feel that the proposed pay for workers on election day is too low. Although we feel that the economics of the process would produce acceptable results, we believe that the Election Commission should set the compensation level at the highest practical possible level. We did not find in the Supreme Court Decision an opinion as to what that figure should be for outside workers. Repeatedly the wording was "proper, reasonable, and fairly commensurate with services rendered." We believe that \$35 per day for a worker who works from 6:00 AM to 6:00 PM is unfairly low. When coupled with the use of a vehicle it becomes an insult to the worker.

We continue to feel that the suggested regulations will cause, if implemented without change, widespread

The Honorable Ken Hechler

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August 26, 1986

disregard for them (not in Raleigh County), and we will have a return to the thoroughly discredited previous method of paying for services-namely hard cold cash. We do not want to see that happen. We want to be a part of the solution-not a problem. We urge you and the other members of the Commission to rethink the regulations and come up with those that everyone can respect and abide by.

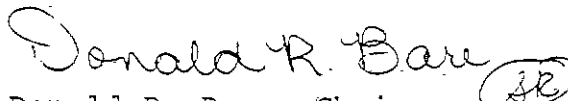

By the way, the \$50 pay for Commissioners and poll clerks is unrealistic also, in my opinion. The work is hard and the hours long. They should be more fairly compensated. I hope that the Secretary of State will suggest to the legislature that an appropriate increase in the maximum allowable rate be enacted.

The Committee would like to suggest that a maximum rate of \$50 per day be considered for outside workers, except for those driving their cars. We feel that a rate of \$75 per day is reasonable for those individuals, considering the capital cost of the automobile and gasoline consumed in the process. These figures should be tied to the Cost of Living Index so they will remain current.

We would also like to suggest that the form to be used by drivers hauling voters on election day be modified to simply show opening and closing odometer readings for the day instead of requiring readings each time a voter is hauled.

Thank you for taking time to share your thoughts with me by telephone.

Sincerely yours,

Donald R. Bare 
Donald R. Bare, Chairman 
Raleigh County Democratic
Executive Committee

DRB/srr

KEN HECHLER
Secretary of State

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September 10, 1986

Stephen E. Haid, Director
WVEA Governmental Relations
West Virginia Education Association
1558 Quarrier Street
Charleston, WV 25311

Dear Steve:

Thanks for your note of September 3, 1986
providing comments on proposed regulations regarding
campaign workers.

Concerning your comment on Section 5.3 of the
Regulations entitled "Payment of Election Workers" it
appears that the penalties prescribed in Chapter 3,
Article 9, Section 23 of the West Virginia Code would
apply. The generic penalty provision provides that
when individuals commit offenses for which no-penalty
or punishment is prescribed in any other section...that
they shall be fined not more than \$1,000 or, in the
discretion of the Court, be confined in jail for not
more than one year. I agree with you that this may
well be something we should state specifically in the
regulations rather than requiring individuals to go
back to the Code to determine the penalty.


Our interpretation is that regardless of how many
candidates are being supported by a particular slate,
the slate could only hire one worker per precinct. I
agree with you that if each candidate were to hire
workers independently that the number of paid workers
would elevate significantly. Concerning your
suggestion that only one worker could be hired per 50
precincts, I can't help thinking this is far beyond the
intent of the Supreme Court ruling. Concerning your
comment that Section 7 is incredibly generous to

Stephen E. Haid
September 8, 1986
Page Two

candidates and political action committees, I think the real meat is that the payment has dropped from a potential in excess of \$200 to \$35 per day for election workers.

As we draft the final regulations, we will seriously consider each one of your comments. I really appreciate you taking the time to respond.

Sincerely,


Ken Hechler
Secretary of State



WEST VIRGINIA EDUCATION ASSOCIATION

1558 QUARRIER STREET CHARLESTON, WEST VIRGINIA 25311 304-346-5315 1-800-642-8261

THOMAS J. VOGEL, PRESIDENT
JAMES D. CARUTH, EXECUTIVE DIRECTOR

September 3, 1986

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Sir:

Thank you for providing the opportunity to comment on the proposed regulations regarding campaign workers.

I have simply outlined a few thoughts and submit them for your consideration.

Section 5. Payment of Election Workers

- 5.3 Any payment, other than check, in cash, service or anything of value is unlawful [penalties should be prescribed and clear enforcement capability provided for].

Section 7. Employment of Election Workers

- 7.3 This section appears to allow each candidate to hire one worker per precinct. In Kanawha County, a slate of 20 candidates could collectively hire 4000! paid workers.

I would much prefer that it be unlawful to hire or pay any "election day" worker, but if this step is not possible, I would prefer very tightly drawn and restrictive language that would not allow more than one election day worker to be hired for each 50 precincts.

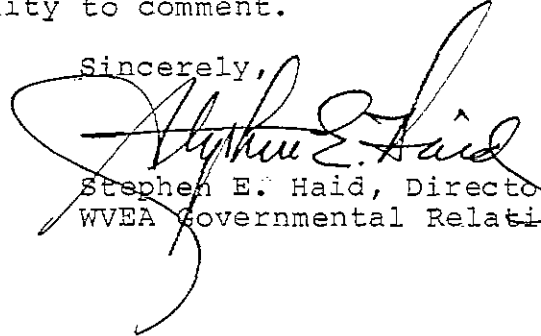
Section 7 should strike at the heart of our shameful practice of vote buying disguised as hiring election day workers. Yet this whole section is incredibly generous to candidates, PACs and committees.

September 3, 1986
Page Two.

I'm fearful that this section, if left to stand, would simply legitimize extant practices. It might very likely have no effect at all.

Please, back to the drawing boards on Section 7, but thank you for the opportunity to comment.

Sincerely,



Stephen E. Haid, Director
WVEA Governmental Relations

SEH/kbm

cc: Tom Vogel, WVEA President
James Caruth, WVEA Executive Director
Jewell Wilburn, WVEA PAC Treasurer



**WEST VIRGINIA STATE
DEMOCRATIC
EXECUTIVE
COMMITTEE**

7½ PENNSYLVANIA AVE.
P.O. BOX 6067 CHARLESTON, WV 25362
PHONE 1-304-342-8121

August 21, 1986

The Honorable Ken Hechler
Secretary of State
State Capitol Complex
Charleston, WV 25305

Dear Mr. Secretary,

At its August 16 meeting in Clarksburg, the West Virginia State Executive Committee reviewed the proposed Legislative Rules on the employment of election workers.

The attached recommendations were adopted by the Committee as its comments on the regulations. You may also be receiving comments from individual members.

The working committee, which prepared these suggestions, was chaired by Floyd Fullen and included other members of the Legislature, County Executive Committee Chairmen, and elected county officials.

We hope that our efforts will be helpful.

Sincerely,

Sally K. Richardson
Chairman

JOE BOB GOODWIN, CHAIRMAN
SHELBY LEARY, ASSOCIATE CHAIRMAN
ANNE BARTH, EXECUTIVE DIRECTOR



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STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

September 2, 1986

Rob Abbot
325 Montana Street
Mt. Hope, WV 25880

Dear Rob:

Thanks for taking time to comment on the administrative regulations promulgated by the State Election Commission dealing with election day expense.

I share your concern that all political action committees are clumped into a homogeneous unit. The clumping has been a result of the West Virginia Code categorizing everything into some type of political entity and when setting up expenditure limits or contribution limits, they have been treated equally. As we form the final regulations, we will work on a specific separation but if you have any specific ideas in mind, I'd love to hear them.

Concerning your comments on the 300-foot bill, voter turn-out for the Primary Election was higher than in the past several Primary Elections. I attribute the high turn-out to a large part to the 300-foot bill and the fact that voters could go to cast their ballots on election day without being harassed by a large number of people asking for their vote.

Again, I appreciate your note.

Sincerely,

Ken Hechler
Secretary of State

August 21, 1986

The Honorable Ken Hechler
West Virginia Secretary of State
State Capitol, Building 1
Charleston, West Virginia 25305

Dear Ken:

I am writing to express a concern I have about the proposed regulations governing the payment of election workers. As a member of the State Democratic Executive Committee, my concern involves the effect which these proposed regulations might have on the activities of political parties in the state.

In your letter of July 29, 1986 you have outlined the essence of the regulations which have proposed by the State Election Commission. ~~I am worried that the proposed regulations~~ enhance the role of political action committees and, in fact, elevate them to the status of political parties with regard to payment for election day activities. Specifically, section a of your letter indicates that "each candidate or candidate's committee, each party committee and each political action committee may lawfully employ only one paid election worker per precinct on election day." The regulations further specify that "a candidate or his committee must use his paid election workers solely for his own campaign..." Party committees and political action committees are apparently exempt from this "single candidate" requirement. While I think it is appropriate for party committees to engage in activities on behalf of all party nominees, I wonder if the ability of political action committees to promote "slates" might not undermine the intentions of the commission to limit the activities of "slate makers."

I would like also to express an opinion about another matter which affects the activities of political parties. The "300 foot bill" which limits campaign activities in the vicinity of polling places also prohibits stationing representatives from political parties for the purpose of determining what voters have come to the polls in a particular precinct. I believe that one of the goals of a political party is to encourage people to vote. Traditionally, this has been accomplished by keeping track of who has voted and contacting non-voters toward the end of election day to encourage them to vote and to provide assistance in

reaching the polls if necessary. I do not consider this "get out the vote" activity to be "campaigning" of the type envisioned when the 300 foot bill was passed by the Legislature. This issue may have been discussed in detail, but I wanted to take this opportunity to let you know my thoughts.

I am proud of the work you are doing on behalf of the voters of West Virginia, and I appreciate the efforts you have made to solicit the views of those affected by your actions.

Sincerely,



ROB ABBOT



KEN HECHLER
Secretary of State

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Deputy Secretary of State

BARBARA STARCHER
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STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

August 8, 1986

Dear Friend,

Here are the draft regulations relating to the payment of campaign workers for your review and comment.

As I mentioned in my previous letter, the July 9 decision of the West Virginia Supreme Court of Appeals requires that, in consultation with the State Election Commission, the Secretary of State must promulgate rules requiring that payment of election day and pre-election workers be "fairly commensurate with services rendered."

This draft represents our combined efforts to prepare regulations which would satisfy the mandate of the Court, be enforceable, and be as simple as possible. The proposed forms for reporting by the paid workers to the candidate or committee are also attached.

If you wish to comment on these regulations, please send your ideas to me in writing no later than August 29. We will review all comments, revise the regulations as needed, and issue the final regulations in time to be in effect for the November election campaign season.

Thanks for your cooperation.

Sincerely,

Ken Hechler
Ken Hechler
Secretary of State

Phone 304-6367679

This mail was given to me a week ago and I don't know anything about it, I don't understand it.

*Carmin T. Artyast
112 Gilmore St
Elkins W.Va 26246*

SUGGESTED CHANGES TO PROPOSED RULES

Title: Election Expenditures

1. Change Section 3 by including the current Section 4. and numbered it 3.7

Reason- It would make it clear that the exceptions apply to Section 3.

2. Change Current Section 4. by adding in the first line after the word "firm" the phrase "or persons"

Reason- To make it clear that professional people who contract and don't work for an hourly wage can also be legally paid their fair prevailing rate.

3. Change Current Section 4. by striking "\$35." and inserting "\$50."

Reason- \$35. would not be state minimum wage for an election day and would be much lower than the amounts paid to workers that work inside the polls.

4. Change Section 5.1 by striking "\$35." and inserting "\$50."

Reason- \$35. would not be state minimum wage for an election day and would be much lower than the amounts paid to workers that work inside the polls.

5. Change Section 5.6 by adding in the third line after the word "names" the phrase "and their social security numbers."

Reason- Mere names without social security numbers are not worth much to the I.R.S.

6. Change Section 5.6 by adding in the fourth line after the word "year" the phrase "that earned more than \$100.00"

Reason- This would require reporting for those people that worked more than just the primary and general election days and would cut down drastically on the required paper work for a person that hires a worker for just a day or so.

7. Change Section 7.1 by including sections 7.4 and 7.6 and by making it a compound sentence.

Reason- Brevity and clarity

8. Change Section 7.2 language to read as follows:

"Under no circumstances shall a candidate or candidate's authorized committee employ directly or indirectly on election day in excess of a total number of workers equal to one worker per precinct within the area the candidate is seeking to represent."

Reason- It is unclear whether the suggested rule limits one worker to each precinct so that if one only worked ten precincts they would be

limited to ten workers even if there were one hundred precincts in their district. It simply is not possible to have a driver, helper, checker, or other worker at a poll if only one can be there, and it would make compliance very difficult for people moving around from precinct to precinct with information, materials, etc.

9. Change Section 7.5 language to read as follows:

"Under no circumstances shall any party committee or combination of committees of the same political party employ directly or indirectly on election day within a county in excess of a total number of workers equal to one worker times the number of precincts within the said county."

Reason- Same general reason as given for 7.2. The additional words that indirect employment is prohibited are added for obvious reasons. Moving "within a county" from the end of the sentence to after "election day" to make it clear that workers can't be moved from one county to another on a statewide basis as allowed by the language in 7.2. for individual candidates.

10. Change Section 7.7 language to read as follows:

"Under no circumstances shall any political action committee employ directly or indirectly on election day within a county in excess of a total number of workers equal to one worker times the number of precincts within the said county or precincts within the area if it be less than a county the candidate or candidates supported or opposed by the

political action committee seek or seeks to represent.

Reason- Same general reason as given for 7.2. The additional words that indirect employment in prohibited are added for obvious reasons.

Adding "within a county" after "election day" to make it clear that workers can't be moved from one county to another on a statewide basis as allowed by the language in 7.2 for individual candidates. Adds language to clarify that if a candidate is only running in part of a county only those precincts in their area would be considered for worker limits in that particular county.

11. Delete Sections 7.3 and 7.8 since they appear to be state law already.

12. Delete requirement for "Election Day Driver's Report".

Reason- It was the feeling of the committee that the form is unnecessary and would discourage workers from driving especially with the reduced income and no allowance for extra expenses for gasoline and mileage.

13. Modify "Election Campaign Worker's Report" to include only the following and be signed and certified by the candidate or committee and not the worker.

a. County/Counties covered by the report

b. Name of Candidates or Committee doing hiring

c. Individual names of workers

d. Amount paid to individual workers

e. Number of days each worker was employed

f. Social Security numbers of workers earning more \$100.00 in a
calendar year

Respectively submitted:



Floyd Fullen
Ad hoc committee chairman
WV State Demo. Executive Comm.

Dated:

Aug 17, 1966