

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

Form #2

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1989 MAY 24 AM 10:44  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: SECRETARY OF STATE TITLE NUMBER: 153

RULE TYPE: INTERPRETIVE; CITE AUTHORITY §3-1A-6; §3-8-12(d)

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

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 20

TITLE OF RULE BEING PROPOSED: CAMPAIGN CONTRIBUTIONS BY STATE  
CONTRACTORS

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 June 23, 1989 AT 5:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

SECRETARY OF STATE  
STATE CAPITOL  
CHARLESTON, WV 25305  
ATTN: BOB WILKINSON

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

*Robert E. Wilkinson*

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

REVISED  
JUNE 15, 1989

TITLE 153  
INTERPRETIVE RULES  
SECRETARY OF STATE

FILED

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SERIES 20  
CAMPAIGN CONTRIBUTIONS BY STATE CONTRACTORS

OFFICE OF REG. & LICENSING  
SECRETARY OF STATE

§153-20-1. General.

- 1.1. Scope. -- This rule defines the prohibition of campaign contributions by state contractors.
- 1.2. Authority. -- W. Va. Code §3-1A-6; §3-8-12(d)
- 1.3. Filing Date. --
- 1.4. Effective Date. --

§153-20-2. Definitions.

- 2.1. "State Contractor" means a person who:
  - 2.1.1. Enters into any contract with the State of West Virginia or any department, agency or any political subdivision thereof either for:
    - a. The rendition of personal services; or
    - b. Furnishing any material, supplies or equipment; or
    - c. Selling any land or buildings
    - d. Leasing any material, supply, equipment, land or building; <sup>125</sup> <sub>5</sub>
  - 2.1.2. If the payment for the performance of the contract or payment for the material, supplies, equipment, land or buildings is to be made in whole or in part for funds appropriated by the legislature.

- 2.2. The period during which a person is prohibited from making a contribution or expenditure for political purposes is the time between the earlier of the commencement of negotiations or when the bid has been opened in requisitions involving sealed bids, and the later of:
  - 2.2.1. The competition of performance under

the contract; or

- 2.2.2. The termination of negotiations for the contract.

2.3. For purposes of this rule, a contract includes:

- 2.3.1. A sole source, negotiated, or advertised procurement contract, <sup>between a state contractor and</sup> conducted by the State of West Virginia, or any of its agencies or political subdivisions;

- 2.3.2. A written (except as otherwise authorized) contract, between any person and the State of West Virginia or any of its agencies or political subdivisions, for the furnishing of personal property, real property or personal services; and

2.3.3. Any modification of a contract, <sup>As defined in 2.3.1 & 2.3.2</sup>

2.4. The basic contractual relationship must be with the State of West Virginia, its agencies, or political subdivisions thereof. A third party beneficiary of a state contract is not subject to the prohibitions of this rule.

§153-20-3. Prohibitions.

3.1. It shall be unlawful for a state contractor, as defined in §153-20-2.1, to make, either directly or indirectly, any contribution or expenditure of money or other thing of value, or to promise expressly or impliedly to make any such contribution or expenditure to any political party, committee, or candidate for state or local office or to any person for any political purpose or use.

3.2. This prohibition runs for the time period set forth in §153-20-2-2.

3.3. It shall be unlawful for any person knowingly to solicit any such contribution from a state contractor.

*from*

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making contributions or expenditures ~~for~~ his or her personal assets.

**§153-20-4. Corporate contributions.** *see new copy*

**§153-20-6. Individuals and sole proprietors.**

4.1. A corporation shall be considered to be a person for the purposes of this rule. Corporations to which the prohibitions of this rule apply, may not expend funds for political purposes except through the establishment of a segregated account pursuant to the provisions of §3-8-8 of the West Virginia Code.

6.1. Individuals or sole proprietors who are state contractors are prohibited from making contributions or expenditures from their business, personal or other funds under their domain or control. The spouse of an individual or sole proprietor who is a state contractor is not prohibited from making a personal contribution or expenditure in his or her name.

**§153-20-5. Partnership contributions.**

**§153-20-7. Employee contributions or expenditures.**

5.1. The assets of a partnership which is a state contractor may not be used to make contributions or expenditures in connection with state elections.

7.1. Nothing in this rule shall prohibit the stockholders, officers, or employees of a corporation, the employees, officers, or members of an unincorporated association, cooperative, membership organization, labor organization, or other group or organization which is a state contractor from making contributions or expenditures from their personal assets.

5.1.1. Individual partners may make contributions or expenditures in their own names from their personal assets.

5.1.2. Nothing in this rule prohibits an employee of a partnership which is a state contractor from



# Contractors Association of West Virginia

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June 15, 1989

Mr. Robert E. Wilkinson  
Office of the Secretary of State  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Wilkinson:

The Contractors Association of West Virginia has reviewed the Title 153 Interpretive Rules, Series 20 -- Campaign Contributions by State Contractors.

We concur that these regulations do not represent any substantial change from existing law since state contractors have been prohibited from making political contributions for a number of years.

However, we would like to note that Section 153-20-4 dealing with corporate contributions is not clearly written with respect to whether a state contractor corporation is allowed to establish and operate a separate segregated fund (Political Action Committee). W.Va. Code 3-8-12(d) does allow a corporation which is a state contractor to expend funds in support of its PAC, and, therefore, this regulation could not modify that legislative directive. Therefore, to make this provision more clear, we recommend this section be written as follows:

4.1 A corporation shall be considered to be a person for the purposes of this rule. Corporations to which the prohibitions of this rule apply are not prohibited by this rule from expending funds for political purposes through the establishment of a segregated account pursuant to the provisions of 3-8-8 of the West Virginia Code.

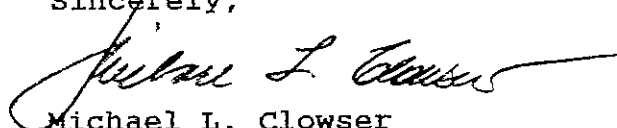


Mr. Robert E. Wilkinson  
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Finally, we note that there are number of editorial clean-up changes which would improve the regulations. We have attached a copy of the regulations detailing these corrections.

We appreciate the opportunity to make our comments on the proposed regulations, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael L. Clowser". The signature is written in dark ink and is positioned above the typed name and title.

Michael L. Clowser  
Executive Director