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May 14, 2003

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia State Police

RULE: New Rule, 81CSR16, Re-employment of Retired Members

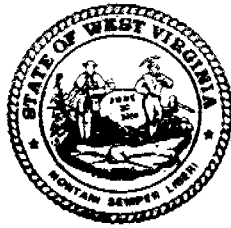
DATE FILED AS AN EMERGENCY RULE: April 29, 2003

DECISION NO. 4-03

FILED  
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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

JOE MANCHIN, III  
Secretary of State



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EMERGENCY RULE DECISION  
(ERD 4-03)

AGENCY: West Virginia State Police  
RULE: New Rule, 81CSR16, Re-employment of Retired Members  
FILED AS AN EMERGENCY RULE: April 29, 2003

- par. 1 The State Police has filed the above new rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

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- par. 6 The State Police filed this emergency rule with supporting documents with the Secretary of State April 29, 2003 and with the LRMRC April 29, 2003.
- par. 7 It is the determination of the Secretary of State that the State Police has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §15-2-51 reads:

***§15-2-51. State police reemployment.***

***(a) The Legislature finds:***

***(1) That the West Virginia state police is currently suffering from an unacceptably high number of vacant trooper positions, and that given the time factors and expense associated with the hiring and training of personnel with no prior law-enforcement experience, it is in the interest of the state to reemploy recently retired troopers in order to fill vacant positions;***

***(2) That no pension rights of any kind shall accrue or attach pursuant to reemployment under this section;***

***(3) That the state police shall bear no responsibility for medical payments for work related injuries or illnesses of employees hired pursuant to this section, other than those commonly associated with state employees covered by workers' compensation.***

***(b) Notwithstanding any provision of this code to the contrary, any member of the West Virginia state police honorably retired pursuant to the provisions of section twenty-seven of this article between the first day of December, one thousand nine hundred ninety-seven and the first day of December, two thousand two, may, at the discretion of the superintendent and subject to executive order of the governor specifying circumstances warranting such reemployment and establishing beginning and end dates for such reemployment, be reemployed subject to the provisions of this section.***

***(c) Notwithstanding any provision of this code to the contrary, any honorably retired member of the state police who qualifies for reemployment pursuant to the provisions of this section and who is not currently certified as a law-enforcement officer under section five, article twenty-nine, chapter thirty of this code may be deemed to have met the entry level law-enforcement recertification requirements of 149 CSR 215, Section 15.3, upon successful completion of a course of instruction prescribed by the superintendent. Such course of instruction shall include at a minimum the following subject areas: Firearms training and certification, defensive driving, mechanics of arrest, law of arrest search and seizure, West Virginia motor vehicle law, criminal law update, and domestic crimes.***

***(d) Any member reemployed pursuant to the provisions of this section shall hold the nonsupervisory rank of corporal and shall receive the same compensation as a regularly enlisted member of the same rank. For purposes of determining length of service pursuant to section five of this article, any member reemployed pursuant to this section shall receive credit for all years of service accrued prior to their retirement, as well as service rendered after reemployment. Any member reemployed pursuant to this section shall exercise the same authority as a regularly enlisted member of the state police, shall wear the same uniform and insignia, shall be subject to the same oath, shall execute the same bond, shall exercise the same powers and shall be subject to the same limitations***

*as a regularly enlisted member of the state police.*

*(e) Any member reemployed pursuant to the provisions of this section shall not be eligible for promotion or reclassification of any type, nor shall he or she be eligible for appointment to temporary rank pursuant to the provisions of section four of this article.*

*(f) Any reemployment offered subject to the provisions of this section shall be for a period not exceeding five years from the effective date of this section.*

*(g) Any retired member applying for reemployment under this section shall be required to pass such mental and physical examinations, and meet such other requirements as may be provided for in rules promulgated by the superintendent pursuant to this section.*

*(h) Notwithstanding the provisions of section ten of this article, the superintendent shall make provisions for coverage of personnel employed pursuant to this section by the workers' compensation division, bureau of employment programs. In the event a member reemployed pursuant to this section sustains an illness or injury which is work related in origin, any cost associated with the treatment of same shall be defrayed in this manner and not from state police funds.*

*(i) In the event a work related illness or injury, as described within subsection (h) above, renders a member of the division employed pursuant to the provisions of this section permanently physically or mentally disabled, the provisions of subsections (a) and (b), section twenty-nine of this article shall apply, and the member's existing pension shall be recalculated as though the disabling event had occurred coincident with the member's original retirement. Any change in benefits resulting from this recalculation shall not be retroactive in nature. The provisions of subsection (c), section twenty-nine of this article shall not apply with respect to payments for medical, surgical, laboratory, X-ray, hospital, ambulance and dental expenses and fees. Neither shall the provisions of this subsection apply in the event the member is disabled due to some cause or event which is determined not to be work related.*

*(j) Any individual reemployed pursuant to this section is not eligible to contribute to any pension plan administered by the consolidated public retirement board, nor may he or she establish or accrue any new pension eligibility pursuant to such reemployment.*

*(k) Notwithstanding any provision of this code to the contrary, any member reemployed pursuant to this section shall serve at the will and pleasure of the superintendent, and is subject to termination without cause. Any member reemployed pursuant to this section shall not be included in the classified service of the civil service system.*

*(l) Notwithstanding any provision of this code to the contrary, compensation paid to any member reemployed pursuant to this section shall be in addition to any retirement payments or pension benefits which he or she is already entitled to receive under section twenty-seven of this article.*

*(m) The provisions of this section shall terminate on the first day of April, two thousand four.*

par. 9 It is the determination of the Secretary of State that the State Police has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

*(f) For the purposes of this section, an emergency exists when the promulgation of a*

*rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the State Police are as follows:

The West Virginia State Police is currently suffering an unacceptable high number of vacant Trooper positions. Hiring & training personnel with no prior law enforcement experience requires significant time & expense. Re-employment of recently retired members in order to fill vacant positions is in the best interest of the State as it allows the most rapid & cost effective method for immediately filling vacancies.

The State Police currently has 83 vacancies out of 679 funded positions. Current cadet classes will only fill 55 of the present vacancies. Field training for the new members will not be complete until early 2004. There is a realistic anticipation of additional vacancies due to retirement during the next year. This shortage of manpower results in staffing shortages at detachments. These shortages cause reduced coverage & increased response time.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "immediate preservation of public peace, health, safety or welfare" & "to prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 4-03 or ERD 4-03 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Police, the Attorney General and the Legislative Rule Making Review Committee.

  
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JOE MANCHIN, III  
Secretary of State

Entered \_\_\_\_\_