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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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August 11, 1993

### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: State Tax Division

RULE: New Rule, Series 35, Charitable Raffle Boards and Games

DATE FILED AS AN EMERGENCY RULE: July 9, 1993

DECISION NO. 12-93

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

  
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KEN HECHLER  
Secretary of State

**FILED**

**Aug 11 4 15 PM '93**

**OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE**



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**DECISION**

**EMERGENCY RULE DECISION  
(ERD 12-93)**

AGENCY: State Tax Division  
RULE: New Rule, Series 35, Charitable Raffle Boards and Games  
FILED AS AN EMERGENCY RULE: July 9, 1993

- par. 1 The State Tax Division (Division) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a 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-a(a))].
- par. 4 (A) Procedural Compliance: WV 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 thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State July 9, 1993 and with the LRMRC July 9, 1993.

par. 7 It is the determination of the Secretary of State that the Division has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §43-23-11 reads in part:

*The commissioner shall propose for promulgation, rules to administer the provisions of this article in accordance with the provisions of §29A-1-1 et seq. of this code: Provided, That the initial promulgation of rules to administer the provisions of this article shall be by emergency rule. Additionally, the commissioner shall promulgate a rule which requires that every charitable raffle board or game shall each bear verification, as defined by §47-23-2 of this article, printed by a manufacturer on each ticket in a game unless, upon application by the taxpayer showing undue hardship, the tax commissioner consents to waive this requirement in favor of some other form of verification.*

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

par. 10 (C) Emergency -- WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) 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 Division are as follows:

When the Legislature enacted S.B. 463 in the regular session and S.B. 6 in the First Extraordinary Session, it enacted W. Va. Code §47-23-1 which authorized charitable raffle boards and games. As this authorizes the selling in this State and under certain circumstances gambling devices such as tip boards, substantial regulation is needed to assure compliance and to prevent substantial harm to the public interest.

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(g). . . mandated by the Legislature, and to prevent substantial harm to the public interest.

par. 14 This decision shall be cited as Emergency Rule Decision 12-93 or ERD 12-93 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Tax Division, the Attorney General and the Legislative Rule Making Review Commission.

  
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KEN HECHLER  
Secretary of State

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Dec 11 4 15 PM '93

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