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August 12, 1993

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE


AGENCY: Tax Commissioner

RULE: New Rule, Series 36, Preneed Cemetery Companies

DATE FILED AS AN EMERGENCY RULE: July 9, 1993

DECISION NO. 16-93

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


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Secretary of State

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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DECISION

EMERGENCY RULE DECISION
(ERD 16-93)

AGENCY: Tax Commissioner
RULE: New Rule, Series 36, Preneed Cemetery Companies
FILED AS AN EMERGENCY RULE: July 9, 1993

- par. 1 The Tax Commissioner (Commissioner) has filed the above new 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 Commissioner 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 Commissioner 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 11-10-5 reads in part:

The tax commissioner shall administer and enforce each tax to which this article applies and, in connection therewith, shall prescribe all necessary forms. The tax commissioner may make all needful rules and regulations for the taxes to which this article applies as provided in §29A-1-1 et seq. of this code.

par. 9 It is the determination of the Secretary of State that the Commissioner 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 Commissioner are as follows:

The Legislature when it enacted Committee Substitute for SB 407 authorized the establishment of preneed cemetery companies. There has been considerable discussion re the payment of different expenses, the amount of the annual registration fee and the involvement of trustees. This rule, by addressing these and other issues prevents substantial harm to the public interest.

par. 13 It is the determination of the Secretary of State that this proposal does not qualify under the definition of an emergency as defined in §29A-3-15(g).

par. 14

This decision shall be cited as Emergency Rule Decision 16-93 or ERD 16-93 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Tax Commissioner, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

FILED

June 12 4 35 PM 1993

**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**