

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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JUL 7 1 41 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Tourism Commission TITLE NUMBER: 144

CITE AUTHORITY: 5B-2-12

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW _____

AMENDMENT TO AN EXISTING RULE: YES____, NO XX

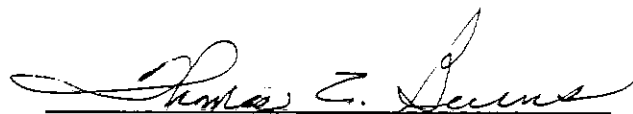
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: Series II

TITLE OF RULE BEING ADOPTED: Direct Advertising Grants

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS August 7, 1995



Thomas E. Lewis

TITLE 144
PROCEDURAL RULES
TOURISM COMMISSION
SERIES II
DIRECT ADVERTISING GRANTS

PROMULGATION HISTORY

These procedural rules, which govern the process for making available moneys deposited in the Tourism Promotion Fund for direct advertising within the state's eight regional development districts, have the following promulgation history:

- **May 25, 1995** - Rules filed with the Secretary of State. Comment period begins.
- **June 30, 1995** - Comment period ends.
- **July 7, 1995** - Final rules filed with Secretary of State with Notice of Adoption.
- **August 7, 1995** - Effective date of rules.

FILED

JUL 7 1 41 PM '95

Title 144
Procedural Rules
Division of Tourism & Parks
Series 2
Direct Advertising Grants

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

144-2-1 General

- 1.1 Scope -- These procedural rules govern the application and award criteria for disbursement of direct advertising grants for regional advertising from the "tourism promotion fund."
- 1.2 Authority -- West Virginia Code 5B-2-12.
- 1.3 Filing Date -- July 7, 1995.
- 1.4 Effective Date -- August 7, 1995.

144-2-2 Definitions

- 2.1 "Qualified Applicant" means an organization whose purpose, in whole or in part, is to promote the tourism industry of West Virginia; which demonstrates the ability to provide the required match when invoiced; which represents a city, county, region or regions, or tourism industry or activity; and which in the judgment of the Commission adequately represents the interests of the regional development district or districts which the applicant's application covers.
- 2.2 "Tourism Commission" (Commission) means the nine-member commission created by West Virginia Code 5B-2-8.
- 2.3 "Division" means the West Virginia Development Office, or any successor agency or office.
- 2.4 "Total project cost" means the total of all proposed project expenditures.

144-2-3 Applications

- 3.1 An applicant shall apply for tourism promotion funds on forms supplied by the Commission.
- 3.2 The application shall include the complete advertising or marketing project, in sufficient detail to permit evaluation against the required criteria.
- 3.3 The Commission may request such additional information as it determines necessary to evaluate any application, including but not limited to financial and budgetary information related to the application or to the applicant.
- 3.4 Failure to provide the required application information, or failure to provide such additional information as the Commission reasonably requests by a specific date, in order to evaluate any application, may at the Commission's option, disqualify the application.
- 3.5 The Commission may establish application deadlines and dates for grant award cycles. If the Commission does so, it shall disseminate notice of such dates to the West Virginia Hospitality and Travel Association and to any other person or organization requesting to be placed on the Commission's mailing list for such purpose.
- 3.6 Applications and required submissions associated with an awarded project may be public information to the extent provided in West Virginia Code 29B-1-1 et. seq., the Freedom of Information Act.
- 3.7 All applications and required submissions associated with a project not awarded shall be returned to the applicant; however, evaluation forms and findings made by the Division or the Commission may be public information to the extent provided in West Virginia Code 29B-1-1 et. seq., the Freedom of Information Act.
- 3.8 In order to assure that funds received by an applicant under this program are not used to fund regular ongoing advertising activities but instead to support new advertising activities, the Commission may require that an applicant furnish financial information as described above in §3.3.
- 3.9 The Commission reserves the right to reject an application on the basis of the amount of funding it seeks, to request the applicant to revise an application to a lower or higher level of funding, or to award more or less than the full amount requested in the application.
- 3.10 No application shall be considered by the Commission unless the applicant's share of the project cost is at least \$10,000.00

144-2-4 Review and Evaluations

- 4.1 The Commission will review all applications for completeness and eligibility.
- 4.2 The Commission shall evaluate and score all eligible applications.
- 4.3 Each application will be scored on the basis of 100 points, as detailed in §144-2-5. Individual scores will be totaled and averaged for each application, to produce the final score. Applications shall be awarded in accordance with the scoring and evaluation.

144-2-5 Evaluation Criteria

- 5.1 Eligible applications shall be evaluated and scored, up to a maximum of 100 points, on the following basis.
 - 1. Up to 20 points -- project demonstrates potential for a strong positive return on investment, is well researched and includes tracking and evaluation measures.
 - 2. Up to 20 points -- project is appropriate to the market selected and complements or carries forward goals or objectives included in the Tourism Strategic Marketing Plan.
 - 3. Up to 20 points -- project encompasses multiple attractions, municipalities, counties, or a regional development district or districts.
 - 4. Up to 20 points -- project is creative, professional in quality and attainable with the funds requested or with additional identified and available funds.
 - 5. Up to 10 points -- project is to a new market or media.
 - 6. Up to 10 points -- project region has not received funding in the past.

144-2-6 Match Requirement

- 6.1 Applicant must provide a minimum of 50% of the project cost.
- 6.2 Cost overruns above the award amount shall be borne by the applicant unless the Commission grants prior approval in writing.
- 6.3 Any changes in the project after award requires prior approval of the Commission and may not materially change the project's objective or goal.

- 6.4 The match shall be a cash match. No in-kind services may be utilized for the match but may be utilized to reduce the overall cost of the project.
- 6.5 State funds from any source may not be used for the match. Non-state funds from any source may be used for the match.

144-2-7 Eligible Expenditures; Ineligible Expenditures

- 7.1 Eligible expenditures are new advertising expenditures directly related to direct advertising. Direct advertising includes but is not limited to advertising on television, radio, newspaper, magazines and outdoor advertising (billboards) or any combination thereof.
- 7.2 Ineligible expenditures include, but are not limited to:
 - 1. Administrative costs of the applicant, including travel costs.
 - 2. Cost associated with preparation of the application.
 - 3. Rent or the purchase of real estate.
 - 4. Construction costs.
 - 5. Political or lobbying activities of any kind.
 - 6. Membership fees or dues to any organization.
 - 7. Events, fairs or festivals.
 - 8. Purchase or rental of any audio/visual equipment.
 - 9. The costs of alcoholic beverages.
 - 10. Expenditures not identified within the project application, unless the Commission grants prior approval in writing.
 - 11. Regular ongoing advertising activities.

144-2-8 Audit & Compliance

- 8.1 The state reserves the right to review/audit an applicant's records relating to the project. Records must be retained for a minimum of three years after the close of the project.
- 8.2 The state may terminate any project agreement upon discovery of any violation of the terms of the agreement, these rules, or state or federal law.

144-2-9 Project Agreement

- 9.1 Simultaneously with the award of a project, the Division shall enter into an agreement with the applicant detailing the responsibilities of both parties, the payment schedule, the project timetable, and any other necessary or appropriate conditions.
- 9.2 The agreement shall require the applicant to hold harmless the State of West Virginia for any liability arising from the agreement.

West Virginia

It's You!

RECEIVED
JUN 26 1995
BUREAU OF COMMERCE
BUREAU COMMISSIONER

June 22, 1995

West Virginia Tourism Commission
2101 Washington Street, East
Charleston, WV 25303
Attn: Jim Lawrence

Dear Mr. Lawrence:

West Virginia It's You has received a copy of the Fiscal Note For Proposed Rules, titled DIRECT ADVERTISING GRANTS. The filing allows for public comment through June 30, 1995.

Upon review of the proposed rules, we must comment on 144-2-3.9 which states "No funds received by an applicant under this program may be used to advertise in the *West Virginia It's You* magazine." This particular rule would be unfairly exclusionary as well as detrimental to the future success of *West Virginia It's You* - the state's only tourism magazine. While we understand the "principle" behind the rule (i.e., using the monies to support new advertising ventures and not to replace current advertising), we question the need and legality of singling out *West Virginia It's You* as the only prohibited advertising media.

As you are well aware, the local tourism bureaus and other organizations - qualifying under proposed rule 144-2-2.1 "Qualified Applicant" - currently utilize a broad base of media for advertising. Publications, print, and broadcast media are extensively utilized. Your organization, too, utilizes these advertising outlets. I see no mention of any other currently utilized media as being excluded, except *West Virginia It's You*. This particular rule would be specifically harmful to *West Virginia It's You*; would be unnecessary; would be unwise.

Rule 144-2-3.8, which states in part (grants) "...are not used to fund regular ongoing advertising activities but instead to support new advertising activities" will insure the Commission that the funds go to the correct activities. Whether these activities include NEW and ADDITIONAL advertising in *West Virginia It's You*, or any other

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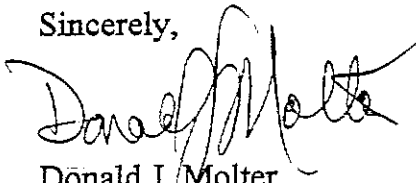
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form of media is immaterial. The fact remains that the purpose for the funding is to improve potential revenue into West Virginia's tourism industry, and *West Virginia It's You* should be part of that.

Singling us out for exclusion, I am advised, would be of questionable legality. The United States and West Virginia constitutions guarantee all of us the equal protection of the law. Excluding *West Virginia It's You* would not only be unwise public policy, it would also be unconstitutional.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donald J. Molter". The signature is written in dark ink and is positioned above the printed name and title.

Donald J. Molter
Publisher



July 7, 1995



Gaston Caperton
Governor

Bureau of
Commerce

James B. Lawrence
Commissioner

Division of Tourism
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25305-0312

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Donald J. Molter, Publisher
West Virginia It's You
425 S. Holden Street
Clarksburg, West Virginia 26301

Dear Don:

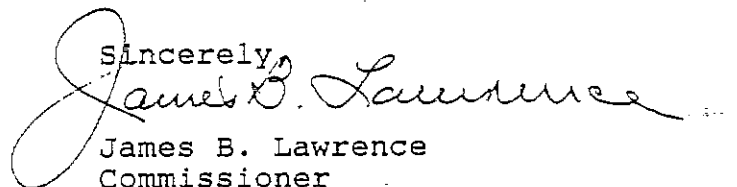
Thank you for your letter of June 22, 1995 in which you express your interest and comments concerning the proposed procedural rules governing direct advertising grants from the Tourism Promotion Fund. After due consideration of your comments, we have made the following changes to the procedural rules:

- Eliminated section 3.9 which stated: "No funds received by an applicant under this program may be used to advertise in the West Virginia It's You magazine."
- Amended Section 7.1 to read as follows: "Eligible expenditures are new advertising expenditures directly related to direct advertising. Direct advertising includes but is not limited to advertising on television, radio, newspaper, magazines and outdoor advertising (billboards) or any combination thereof."
- Added the following to Section 7.2: "11. Regular ongoing advertising activities."

The Commission is of the opinion that grants awarded from the Tourism Promotion Fund should not be used to supplant existing marketing activities. We believe that goal is achieved with the above changes without identifying a specific publication. We continue to be in full support of the West Virginia It's You magazine and look forward to a continued cooperative effort.

Once again, thank you for your interest and comments.

Sincerely,



James B. Lawrence
Commissioner

cc: William Bright
Thomas Burns