WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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FILED

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NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: ATTORNEY GENERAL TITLE NUMBER: 142

CITE AUTHORITY W. Va. Code § 47-18-20

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: 15

TITLE OF RULE BEING PROPOSED: Proposed legislative rule pertaining to defining the term "federal antitrust laws" and prohibiting tying and reciprocity.

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Roger W. Tompkins

TITLE 142

PROPOSED LEGISLATIVE RULE
ATTORNEY GENERAL
SERIES 15

Title: Proposed legislative rule pertaining to defining the term "federal antitrust laws" and prohibiting tying and reciprocity.

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§ 142-15-1. General.

1.1 Scope - This rule shall apply to any action brought by the Attorney General as parens patriae in federal court for violations of the federal antitrust laws under W. Va. Code § 47-18-17 (1978) and to any person who engages in trade or commerce in or affecting this State.

1.2 Authority - W. Va. Code § 47-18-20 (1978).

1.3 Filing Date -

1.4 Effective Date -

1.5 Purpose - The purpose of this rule is to define the term "federal antitrust laws" as used within W. Va. Code § 47-18-17 (1978) and to prohibit tying and reciprocity in any trade or commerce in or affecting this State.

1.6 Construction - This rule shall be liberally construed to effectuate the beneficial purposes of the West Virginia Antitrust Act.

1.7 Severability - If, for any reason, any section, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstances is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, sentences, clauses, phrases, or provisions or their application to any other person or circumstance, and to this end, each and every section, sentence, clause, phrase, or provision of this rule is hereby declared severable.

§ 142-15-2. Definition of "Federal Antitrust Laws" As Used in W. Va. Code § 47-18-17 (1978).

The term "federal antitrust laws" as used within W. Va. Code § 47-18-17 (1978) shall include the provisions of 15 U.S.C. §§ 1, 2, 3, 8, 13, 14, 18, 19, and 45(a) as they currently exist or as they may be amended from time to time.

§ 142-15-3. Prohibited Conduct.

3.1 It shall be unlawful under W. Va. Code §§ 47-18-3, 4 (1978) for any person or group of persons to enter into tie-in agreements. Such agreements include, but are not limited to, agreements which condition or have the effect of conditioning the sale of one product or service upon the purchase of another product or service.

3.2 It shall be unlawful under W. Va. Code §§ 47-18-3, 4 (1978) for any person or persons to enter into agreements resulting in reciprocity. Such agreements include, but are not limited to, agreements in which the sale of a product or service is conditioned upon the seller's purchase of products or services produced or performed by the buyer.

TITLE 142
PROPOSED LEGISLATIVE RULE
ATTORNEY GENERAL
SERIES 15

Title: Proposed legislative rule pertaining to defining the term "federal antitrust laws"and prohibiting tying and reciprocity.

SUMMARY OF PROPOSED LEGISLATIVE RULE AND
STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE

The Antitrust Division of the Office of the Attorney General is promulgating a rule designed to define the term "federal antitrust laws," and to define and prohibit certain unlawful activities contemplated in W. Va. Code §47-18-3 (1978).

The rule is divided into three sections. The first section, entitled "General," addresses the scope, authority, filing date, effective date, construction and severability of the rule. The second section, entitled "Definition of 'Federal Antitrust Laws' As Used in W. Va. Code § 47-18-17 (1978)," provides the citations for the body of federal antitrust laws necessary in the enforcement and administration of the state antitrust laws. The third section, entitled "Prohibited Conduct," identifies "tie-in agreements" and "reciprocity" as two types of anticompetitive behavior which have been deemed unlawful in the federal system and are violative of the broad prohibitions of the West Virginia Antitrust Act.

This rule is necessary to define the term "federal antitrust laws" as used within W. Va. Code § 47-18-17 (1978) and to specifically prohibit tying and reciprocity in any trade or commerce in or affecting the State of West Virginia.

For more information, please contact Robert William Schulenberg III, Senior Assistant Attorney General, or Donna S. Quesenberry, Assistant Attorney General, Office of the Attorney General, Antitrust Division, 812 Quarrier Street, Fifth Floor, Charleston, West Virginia 25301.

TITLE 142
PROPOSED LEGISLATIVE RULE
ATTORNEY GENERAL
SERIES 15

Title: Proposed legislative rule pertaining to defining the term "federal antitrust laws" and prohibiting tying and reciprocity.

REPORT ON PUBLIC HEARING, PUBLIC COMMENT PERIOD AND AMENDMENTS

The Public Comment Period with respect to the above-referenced legislative rule expired at 5:00 p.m., August 6, 1990, and a Public Hearing on the proposed rule was held on that date, all pursuant to notice sent to the Office of the Secretary of State for publication in the State Register on July 6, 1990.

One comment was received in favor of the proposed rule and no one attended the Hearing.

A transcript of the Public Hearing will be forwarded immediately upon receipt from the court reporter.

The proposed rule was approved as amended pursuant to recommendations from the Attorney General and members of his staff. These recommendations for amendments were made for the purpose of clarifying the meaning of the originally proposed rule, to bring the rule into conformity with federal decisional law, and to delete provisions which were both inconsistent with federal law and beyond the authority of the Attorney General.

For further information, please contact Robert William Schulenberg, III, Senior Assistant Attorney General, or Donna S. Quesenberry, Assistant Attorney General, Antitrust Division, 812 Quarrier Street, Fifth Floor, Charleston, West Virginia 25301.

BEFORE THE WEST VIRGINIA ANTITRUST DIVISION

IN THE MATTER OF

HEARING ON PROPOSED LEGISLATIVE RULE PERTAINING TO THE ENFORCEMENT AND ADMINISTRATION OF THE WEST VIRGINIA ANTITRUST ACT, W. VA. CODE 47-18-1 THROUGH -23, AND AS IT MAY FROM TIME TO TIME BE AMENDED

L & S Building
812 Quarrier Street
Sixth Floor
Charleston, West Virginia
August 6, 1990

The above-entitled matter came on for hearing at 8:55 a.m. before:

DONNA QUESENBERRY, Hearing Officer

APPEARANCES: No appearances

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Rule Making Exhibits	Marked	Received
No. 1, Sign In Sheet	4	4
No. 2, Letter dated July 27, 1990	4	4

P R O C E E D I N G S

HEARING OFFICER QUESENBERRY: On the record. My name is Donna Quesenberry, Assistant Attorney General, Office of the Attorney General, assigned to the Antitrust Division.

Today is August 6, 1990 and the time by my watch is 11:20 a.m.

We are here today for a public hearing on the Attorney General's Proposed Legislative Rule pertaining to the definition of antitrust laws and comparability and activities presumed to be anti-competitive.

The public hearing in this matter was scheduled to commence at 11:00 a.m. today; however, there have been no persons appearing in this matter.

I would like to have attached to the comment record the sign-in sheets, which for the purpose of this rule, of course, are unexecuted as well as a copy of the letter dated July 27, 1990 to Attorney General Roger Tompkins containing favorable comments for this proposed legislative rule. The comments are from former Deputy Attorney General of the Antitrust Division, Daniel N. Huck. The original has been signed by Mr. Huck through Constance R. Tsokanis, Assistant Attorney General.

(WHEREUPON, the sign-in

sheet was marked for identification as Rule Making Exhibit No. 1 and was received in evidence.)

(WHEREUPON, the letter dated July 27, 1990 was marked for purposes of identification as Rule Making Exhibit No. 2 and was received in evidence.)

In addition to these favorable comments from the Attorney General's staff, I would like to point out that the notice for the public hearing and comment period was filed in a timely manner with the Office of the Secretary of State on or about the 6th day of July, 1990.

In addition to the copy of the proposed legislative rule, Title 142, Series 15 and the Notice of Public Hearing, a fiscal note for the proposed legislative rule was also filed. We have not, to the best of my knowledge, received any additional written comments to the rule other than those comments that have been placed by the Division's staff.

I would also like to note for the record that I am not the original hearing officer assigned to this rule making proceeding. The hearing was originally scheduled to be conducted by Constance R. Tsokanis, Assistant Attorney General. However, because of unforseen circumstances I was called in as a substitute hearing officer for the purposes

of this proceeding. To that extent I will now be responsible and I assume responsibility for finally promulgating this rule and delivering the appropriate number of copies of the rule comments and other matters to the legislative rule making committee and the Office of Secretary of State.

Right now, those are all the comments I will make. We will hold the oral comment period open until approximately 12:00 noon whereupon, if no one attends, the oral portion of the rule-making record will be closed. The written portion of the comment period will be closed at about 5:00 p.m. today to allow persons who have mailed comments or otherwise communicated in writing to successfully effectuate delivery of their comments. We will, therefore, hold this oral comment period open for approximately another 35 minutes.

So, let's take a short recess.

(Whereupon, a short recess was taken.)

HEARING OFFICER QUESENBERRY: We are back on the record. I would like to note that there is still no one in attendance at this public hearing. Therefore, it being 12:00 noon, I declare the oral comment period for this proposed rule closed. I will declare the written comment period for the proposed rule to be closed as of 5:00 p.m. today, August 6, 1990.

Thank you.

(WHEREUPON, at 12:00 noon the hearing was adjourned.)

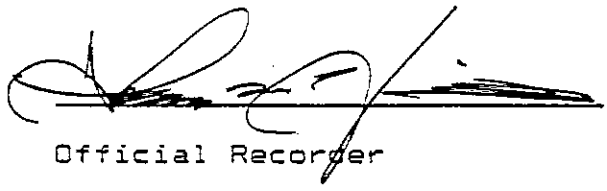
REPORTER'S CERTIFICATE

HEARING DATE: Monday, August 6, 1990

LOCATION: Charleston, West Virginia

I hereby certify that the proceedings and evidence herein are contained fully and accurately on the tapes and notes reported by me at the hearing in the above entitled matter before DONNA QUESENBERRY, Assistant Attorney General, Hearing Officer, and that this is a true and correct transcript of the case.

Date: August 10, 1990



Official Recorder

SIGN IN SHEET

TITLE 142 - SERIES 15

DEFINING FEDERAL ANTITRUST LAWS;
COMPARABILITY AND ACTIVITIES PRESUMED TO BE
ANTICOMPETITIVE.

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STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

ROGER W. TOMPKINS
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOTLINE
(800) 368-8808

July 31, 1990

The Honorable Roger W. Tompkins
Attorney General of the
State of West Virginia
Room E-26, State Capitol
Charleston, West Virginia 25305

Re: Comments on the Proposed Legislative Rules Pertaining to the Enforcement and Administration of the West Virginia Antitrust Act, W. Va. Code §§ 47-18-1 through -23, and as it may from time to time be amended.

Dear Attorney General:

Please accept these comments for filing in support of the proposed legislative rules, which this division has submitted to the Secretary of State. These comments should not be construed as limitations to the proposed rules.

West Virginia Code § 47-18-20 authorizes the Attorney General to engage in rulemaking to aid in the enforcement or administration of the West Virginia Antitrust Act. Any rule proposed by Attorney General must be promulgated in accordance with the Administrative Procedures Act (APA). See W. Va. Code § 29A-3-1 (1986). Rules promulgated through the required rulemaking procedure and done in accordance with the APA have the force of law. See W. Va. Code § 29A-1-2(d)(1) (1986).

In the following comments, each rule will be treated separately. Each series and rule is and should be considered completely severable for the purposes of its adoption and construction.

142 Proposed Legislative Rule 14 §§ 1-3

Section 1 includes the general provisions involving scope, authority, filing date, purpose and construction. It is prefatory in nature, and does not require further comment. This is true of each proposed rule to follow.

Sections 2 and 3 address the question of how the statute of limitations will run with regard to continuing antitrust violations. The rule states that in the instance of a continuing antitrust violation, a cause of action shall be available for four years from the last date upon which the continuing violation took place. The rule also states that an antitrust violation which continues for a period of more than four years shall be deemed a present violation for the purpose of determining the date of accrual of a cause of action.

Actions brought under the Clayton Act must be brought within four years. Clayton Act, Section 4B, 15 U.S.C. § 15b (Law Co-op. 1985). Section 11 of the West Virginia Antitrust Act is analogous in that it addresses the limitation of actions.[1] The West Virginia Antitrust Act is demonstrably more flexible than its federal counterpart with respect to limitations of actions, however, in that it permits causes of action based upon a conspiracy to be brought within four years of the discovery of such conspiracy. It also carves out a clear exception to the four-year rule in the instance of a continuing violation.

The purpose of the proposed rule is to clarify the meaning of the sentence which declares "[f]or the purposes of this section, a cause of action for a continuing violation is deemed to arise at any time during the period of such violation." (Emphasis added.) The proposed rule is a codification of the judicial interpretation of the applicable accrual time for causes of action based on continuing violations in analogous cases outside the area of

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[1] The state limitation of action statute, W. Va. Code § 47-18-11 (1986), reads:

> Any action brought to enforce the provisions of this article shall be barred unless commenced within four years after the cause of action arose, or if the cause of action is based upon a conspiracy in violation of this article, within four years after the plaintiff discovered, or by the exercise of reasonable diligence should have discovered the facts relied upon for proof of the conspiracy. For the purpose of this section, a cause of action for a continuing violation is deemed to arise at any time during the period of such violation.

(Emphasis added.)

antitrust.[2] For example, under the West Virginia Human Rights Act, W. Va. Code § 5-11-1(19) (1987 & Supp. 1989), the West Virginia Supreme Court of Appeals has declared that, in an employment discrimination case dealing with compensation disparity, a continuing violation exists so that a violation of the Human Rights Act is deemed present for as long as the disparity existed and, therefore, a complaint based upon allegedly unlawful compensation disparity over a period of time is not barred even if filed within the limitation period after the compensation disparity last occurred. West Virginia Institute of Technology v. West Virginia Human Rights Commission, ___ W. Va. ___, 383 S.E.2d 490 (1988); see also West Virginia Human Rights Commission v. United Transportation Union, Local 655, ___ W. Va. ___, 280 S.E.2d 653 (1981).

The Legislature authorized a distinct treatment with respect to limitation of actions for continuing violations under the West Virginia Antitrust Act. This proposed rule illuminates that distinction in the context of ruling precedent in this State.

142 Proposed Legislative Rule 14 § 4

This rule seeks to clarify the provisions of W. Va. Code §§ 47-18-8 and -18-9 as they relate to the State's recovery of costs in successful antitrust enforcement actions. A state is not generally permitted to recover attorneys' fees unless that is specifically allowed by statute. The West Virginia Antitrust Act makes such a specific allowance. In pertinent part, W. Va. Code § 47-18-8, which allows the Attorney General to seek injunctive relief necessary to restore and preserve competition, declares that "[i]f a permanent injunction is issued at such proceedings, reasonable costs of the action may be awarded the State, including but not limited to expenses of discovery and document reproduction."

The following section, W. Va. Code § 47-18-9 of the Antitrust Act, allows any person who is damaged in his business or property by reason of a violation to recover "reasonable attorneys' fees, filing fees and reasonable costs of the action. Reasonable costs

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[2] As you know, there has been little judicial interpretation of the West Virginia Antitrust Act, so we must look to "comparable" federal law for guidance as to construction. See W. Va. Code § 47-18-16 (1986). Here, there is no "comparable" federal law. In fact, this is an area where the state statute departs from the federal law. In such instances, we must ascertain legislative intent by examining precedent in other areas of law on analogous points.

of the action may include, but shall not be limited to the expenses of discovery and document reproduction." The next paragraph of this provision makes the State a person for the purposes of that section. Therefore, both sections specifically permit the State cost recovery in successful actions. Both sections are broad provisions, which utilize a form of the phrase "includes but is not limited to." It is a well-settled point in West Virginia and in the federal system that phrases such as "includes, but is not limited to" are construed as a phrases of enlargement which do not limit statutory application to the illustrations given in the statute. Human Rights Commission v. Pauley, 212 S.E.2d 77 at 80, citing Pennsylvania Human Relations Commission v. AltoReste Park Cemetery Assoc., 453 Pa. 124, 306 A.2d 881 (1973). See also FPC v. Corporation Commission of the State of Oklahoma 362 F. Supp. 522 (D.C. Okla. 1973). The proposed rule illustrates the types of costs that the Legislature viewed as recoverable when the State expends precious resources to successfully enjoin violative behavior.

142 Proposed Legislative Rule 15 § 2

This proposed rule gives the citations for the body of federal antitrust law. This is necessary in the enforcement and administration of the state laws in that it specifies the federal law relevant to state antitrust enforcement and administration.

142 Proposed Legislative Rule 15 § 3

This proposed rule clarifies the meaning of the term "comparable," as used in W. Va. Code § 47-18-16. It illustrates the principle recently announced by the Supreme Court in California v. ARC America, ___ U.S. ___, 109 S. Ct. 1661, 104 L. Ed. 2d 86 (1989) that state antitrust provisions which are contrary to or differ from federal antitrust provisions are not preempted by federal law. In that case, Justice White, writing for the majority, declared, "Congress intended the federal antitrust laws to supplement, not displace, state antitrust remedies." Citing 21 Cong. Rec. 2457 (1890) (Remarks of Sen. Sherman); See also Cantor v. Detroit Edison Co., 428 U.S. 579, 96 S. Ct. 3110, 49 L. Ed. 2d 1141 (1976).

142 Proposed Legislative Rule 15 §§ 4.1 and 4.2

Sections 4.1 and 4.2 specify two types of anticompetitive behavior which have been deemed unlawful in the federal system and are violative of the broad prohibitions of the West Virginia Antitrust Act. The purpose of these proposed rules is to clarify

the Attorney General's position on this point based on a careful reading of the applicable law.

Section 4.1 refers to "tie-in" agreements. Such agreements condition the sale of one product or service upon the purchase of another product or service. The ability to condition the sale of one product upon the purchase of another necessarily implies a market power in the desired product and an attempt to leverage such power in the less desired product's market. Such agreements have been held unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1; Section 3 of the Clayton Act, 15 U.S.C. § 14 (1982); and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (a)(1) (1982).

In Fortner Enterprises, Inc. v. United States Steel Corp., 394 U.S. 495 (1969), United States Steel tied favorable credit terms for contractors to the purchase of prefab housing. The Court declared that such arrangements, if proven, "generally serve no legitimate business purpose that cannot be achieved in some less restrictive way." Id. at 503. In International Salt Co. v. United States, 332 U.S. 392 (1947), the lease of an innovative salt processor was conditioned upon the purchase of a certain brand of raw salt. Of that arrangement, the Supreme Court held, "it is unreasonable per se to foreclose competitors from any substantial market." Id. at 396.

Since the time of these cases, tying has consistently been regarded as an undesirable and illegal when it unreasonably restricts free trade. See Capra, Inc. v. Ward Foods, Inc., 536 F.2d 39 (5th Cir. 1976); Moore v. Jas. H. Matthews & Co., 550 F.2d 1207 (9th Cir. 1977); Siegel v. Chicken Delight, Inc., 448 F.2d 41 (9th Cir. 1971), cert. den., 405 U.S. 955 (1972). Even recently, as the Supreme Court has been less willing to find tying arrangements unlawful per se, the Fourth Circuit continues to recognize the competitive damage such arrangements can do. In Matrix Warehouse, Inc. v. Daimler-Benz Aktiengesellschraft, 828 F.2d 1033 (4th Cir. 1987), the court held that "quality control" was not a justification for tying the sale of repair parts to the sale of automobiles when the defendant had already issued specifications for such parts.

Rule 4.2 specifies reciprocity as a per se violation of the West Virginia Antitrust Act. Reciprocity typically occurs when one party buys goods from another only upon the condition that the second party will buy goods from the first. Such agreements have been held per se unlawful under Section 7 of the Clayton Act by the Supreme Court. FTC v. Consolidated Food Corp. 380 U.S. 592 (1965). The Fifth Circuit shed light upon the reason why reciprocal arrangements and tying arrangements were similarly pernicious to

competition in Spartan Grain & Mill Co. v. Ayers 581 F.2d 419, 425 (5th Cir. 1978), cert. den., 444 U.S. 831 (1979):

> The two labels [tying and reciprocity] refer to similar phenomena. In each case, one side of a transaction has special power in the market place. It uses this power to force those with whom it deals to make concessions in another market. In tying arrangements, a seller with economic power forces the purchaser to purchase something else to obtain the desired item. In reciprocal dealings, a buyer with economic power forces a seller to buy something from it to sell it goods. In both cases the key is the extension of economic power from one market into another market.

Either type of arrangement is clearly undesirable from an antitrust enforcement perspective. The Legislature signalled its awareness of this by giving the Attorney General broad enforcement powers and by prohibiting in W. Va. Code § 47-18-3(a) "every" contract in restraint of trade. Given this prohibition, these proposed rules are necessarily illustrative of the types of activities contemplated by the Act.

142 Proposed Legislative Rule 16 § 2

In the instance of an antitrust inquiry based upon the Attorney General's probable cause to believe that wrongdoing has occurred, W. Va. Code § 47-18-7(a) permits the Attorney General to "require production of . . . any matter which is relevant to the investigation." The West Virginia Supreme Court of Appeals has declared that the word "any" when used in a statute means any. In Thomas v. Firestone Tire and Rubber Co., ___ W. Va.___ , 266 S.E.2d 905 (1980), the Court stated:

> We are impressed that the word 'any' represents a fundamental and irreducible concept. It is a statue wrought from the letters A, N and Y; a monument to an idea; an artistic rendering designed to signify a meaningful unit of the English language. The Court is led to the unavoidable conclusion that the word 'any' when used in a statute should be construed to mean, in a word, any . . . .

Id. at 909. Given this clear judicial mandate concerning the construction of the statutory language, the Attorney General would argue that investigative interrogatories are both more desirable

in that they minimize expenditure of resources on both sides[3] and perfectly within the contemplation of the statute. The purpose of this rule, then, is to clarify the expressed legislative intent so that an occasionally perceived loop-hole may be resolved in favor of this practical and cost-effective means of investigation.

142 Proposed Legislative Rule 17 § 2

Section 2 of Proposed Legislative Rule 17 addresses itself to clarifying the prohibition articulated in W. Va. Code 47-18-7(d), in which the Attorney General is prevented from making public the name or identity of any person whose acts or conduct he has investigated, but against whom no enforcement proceeding has been brought under the article. Section 2 explicitly states what has always been implicitly true: A court action for mandamus may be brought against the Attorney General in order to ascertain such information. This rule acknowledges that a court of competent jurisdiction may balance, on a case by case basis, a targeted party's right to privacy when no actionable violation has been found with the public right to access to and supervision of the governing process.

142 Proposed Legislative Rule 18 § 2

This proposed rule explicates state action immunity as the Legislature has articulated it in W. Va. Code § 47-18-5(b). The Legislature recognized the need for state action immunity under the West Virginia Antitrust Act. State action immunity has been discussed at length in the federal system. In order for a course of conduct to qualify for state action immunity, it must be affirmatively be shown that: (1) The state expressed a clearly articulated and affirmative policy restricting competition; and (2) the state actively supervised that policy restricting competition. California Retail Liquor Dealers Association v. Midcal Aluminum, Inc., 445 U.S. 97 (1980). Satisfaction of both the existence of the public policy and active supervision elements must occur. If there is a failure in proof of either element, the test fails and the conduct is not immunized. This proposed rule merely adopts this ruling standard as articulated in Midcal in order to clarify the Legislature's intent in creating the exemption.

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[3] When taken in lieu of depositions, interrogatories are less disruptive for the target of an investigation, since they would allow the target of an investigation or its employees to answer questions under oath without forcing them to come to Charleston to do so.

142 Proposed Rule 19 §§ 2 and 3

These two sections simply express the means which the Attorney General would employ to compel the compliance of any person contemplated by W. Va. Code § 47-18-21 and the priority with which such action or any action to compel would be heard by the court. They have been proposed in order to articulate available redress the Attorney General has access to in the instance that a contemplated person should fail to cooperate.

Each of these rules is essential to the proper administration and enforcement of the West Virginia Antitrust Act. Therefore, I submit these comments in favor of the proposed legislative rules. Please feel free to contact me if you have any questions.

Sincerely,

Daniel N. Huckabert

DANIEL N. HUCK
DEPUTY ATTORNEY GENERAL
ANTITRUST DIVISION

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

ROGER W. TOMPKINS
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOTLINE
(800) 368-8808

August 10, 1990

The Honorable Ken Hechler
Secretary of State
State Capitol
Suite 157-K
Charleston, West Virginia 25305

Re: Filing of agency approved proposed legislative rule pertaining to defining the term "federal antitrust laws" and prohibiting tying and reciprocity; Title 142, Series 15

Dear Mr. Hechler:

By this letter I am informing you that I have filed the above proposed legislative rule with the Legislative Rule-Making Review Committee as an agency approved rule. I am also filing at this time:

(1) a copy of the agency approved rule because of a change in the language from the previously filed rule;

(2) a copy of the notice of agency approval (and the submission) to the Legislative Rule-Making Review Committee;

(3) a report on public hearing, public comment period and amendments; and

(4) a summary of proposed legislative rule and statement of circumstances requiring the rule.

A copy of all items received at the public hearing is forthcoming.

Please feel free to contact Rob Schulenberg or Donna Quesenberry of my staff at 348-0246 if you have any questions.

Very truly yours,

Roger W. Tompkins

ROGER W. TOMPKINS
ATTORNEY GENERAL

RWS/rm
Enclosures