

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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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

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 19

TITLE OF RULE BEING PROPOSED: Proposed legislative rule pertaining to obtaining assistance of public officials in investigations and the commencement of proceedings to compel compliance.

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. Topls

TITLE 142

PROPOSED LEGISLATIVE RULE
ATTORNEY GENERAL
SERIES 19

Title: Proposed legislative rule pertaining to obtaining assistance of public officials in investigations and the commencement of proceedings to compel compliance.

§ 142-19-1. General.

1.1 Scope - This rule shall apply to any investigation being conducted by the Attorney General under W. Va. Code §§ 47-18-6, 7 (1978).

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 establish the procedure which the Attorney General may use to require public officials to render assistance to the Attorney General in an antitrust investigation as required by W. Va. Code § 47-18-21 (1978).

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.

Proposed Attorney General
Legislative Rule
§ 142-19-2

§ 142-19-2. Proceedings to Enforce Compliance by Public
Officials and Employees in Antitrust
Investigations.

If any person contemplated by W. Va. Code § 47-18-21 (1978) fails to render and furnish to the Attorney General, his deputy, or other designated representative, when so requested, any and all information and assistance in such person's possession or within such person's power, the Attorney General may apply to the Circuit Court where such person resides or is employed for an order compelling compliance.

§ 142-19-3. Priority in Actions Brought by the Attorney
General to Compel Compliance with Subpoenas
or Other Investigative Requests.

If any person fails to comply with a subpoena or request for information made by the Attorney General, his deputy, or other designated representative, any application made by the Attorney General to the Circuit Court for an order requiring compliance shall be given expedited hearing by that court.

TITLE 142
PROPOSED LEGISLATIVE RULE
ATTORNEY GENERAL
SERIES 19

Title: Proposed legislative rule pertaining to obtaining assistance of public officials in investigations and the commencement of proceedings to compel compliance.

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 compel compliance by public officials and employees in antitrust investigations and the priority with which any such action to compel would be heard by the court.

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 and third sections, entitled "Proceedings to Enforce Compliance by Public Officials and Employees in Antitrust Investigations," and "Priority in Actions Brought by the Attorney General to Compel Compliance with Subpoenas or Other Investigative Requests," respectively, provides that the Attorney General may apply to the Circuit Court for an order compelling compliance in those instances where public officials and employees have failed to provide requested information and assistance to the Attorney General or his representative for the enforcement of the Antitrust Act. Furthermore, the Circuit Court shall expedite such hearing resulting from any application made by the Attorney General for an order requiring compliance.

This rule is necessary to articulate available redress to the Attorney General in the event that a public agency, official or employee shall fail to cooperate in an antitrust investigation.

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 19

Title: Proposed legislative rule pertaining to obtaining
assistance of public officials in investigations
and commencement of proceedings to compel

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 7, 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 has been approved without alteration by 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.

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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 7, 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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I N D E X

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

1 (WHEREUPON, the sign-in
2 sheet was marked for identification as Rule
3 Making Exhibit No. 1 and was received in
4 evidence.)

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

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

14 In addition to the copy of the proposed
15 legislative rule, Title 142, Series 19 and the Notice of
16 Public Hearing, a fiscal note for the proposed legislative
17 rule was also filed. We have not received, to the best of
18 my knowledge, any additional written comments to the rule
19 other than those comments that have been placed by the
20 Division's staff.

21 I would also like to note for the record that
22 I am not the original hearing officer assigned to this rule
23 making proceeding. The hearing was originally to be
24 conducted by Constance R. Tsokanis, Assistant Attorney
25 General. However, because of unforeseen circumstances I was

1 called in as a substitute hearing officer for the purpose
2 of this proceeding. To that extent I will now be
3 responsible and I assume responsibility for finally
4 promulgating this rule and delivering the appropriate number
5 of copies of the rule comments and other matters to the
6 legislative rule making committee and the Office of the
7 Secretary of State.

8 Those are all the comments I will make at
9 this time. I will hold the oral comment period open until
10 approximately 12:00 noon, whereupon, if no one attends, the
11 oral portion of the rule-making record will be closed.

12 The written portion of the comment period
13 will be closed at about 5:00 p.m. today to allow persons who
14 may have mailed comments or otherwise communicated in
15 writing to successfully effectuate delivery of their
16 comments. I will, therefore, hold the oral comment period
17 open for approximately another 35 minutes.

18 So, let's take a short recess.

19 (Whereupon, a short recess was taken.)

20 HEARING OFFICER QUESENBERRY: We are back on
21 the record. I would note that there is still no one in
22 attendance at this public hearing. Therefore, the time
23 being 12:00 noon, I declare the oral comment period for this
24 proposed rule closed and the written comment period will be
25 closed for this proposed rule at approximately 5:00 p.m.

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today, August 7, 1990.

Thank you.

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

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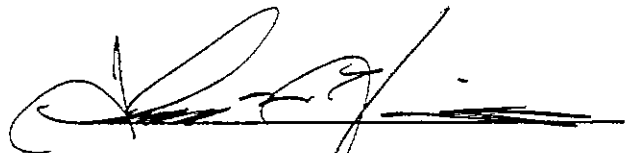
REPORTER'S CERTIFICATE

HEARING DATE: Tuesday, August 7, 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 19

COMPLIANCE BY PERSONS CONTEMPLATED IN W. VA.
CODE § 47-18-21 WITH ANY INQUIRY RELATED TO
AN INVESTIGATION OR ACTION AND PRIORITY OF
ACTION TO COMPEL.

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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.

Page 2

Roger W. Tompkins, Attorney General
July 31, 1990

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

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.)

Page 3
Roger W. Tompkins, Attorney General
July 31, 1990

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

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

Page 5
Roger W. Tompkins, Attorney General
July 31, 1990

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 Aktiengesellschaft, 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

Page 6

Roger W. Tompkins, Attorney General
July 31, 1990

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 its 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

Page 7
Roger W. Tompkins, Attorney General
July 31, 1990

in that they minimize expenditure of resources on both sides³ 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.

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.

Page 8
Roger W. Tompkins, Attorney General
July 31, 1990

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. Huck

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 obtaining assistance of public officials in investigations and the commencement of proceedings to compel compliance;
Title 142, Series 19.

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:

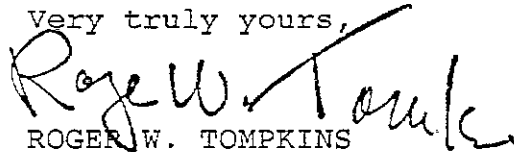
- (1) a copy of the agency approved rule;
- (2) a copy of the notice of agency approval (and the submission) to the Legislative Rule-Making Review Committee;
- (3) a report on public hearing, public comment period and amendments; and
- (4) a summary of proposed legislative rule and statement of circumstances requiring the rule.

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

Secretary of State
August 10, 1990
Page 2

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
ATTORNEY GENERAL

RWS/rm
Enclosures