

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: State Auditor's Office TITLE NUMBER: 155
RULE TYPE: Legislative; CITE AUTHORITY 11A-4-5; Human Rights Comm
v Pauley; 212 S.E.2d 77 1975
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: 1
TITLE OF RULE BEING PROPOSED: Appointment of Special Deputy Comm
of Forfeited and Delinquent Lands

DATE OF PUBLIC HEARING: December 7, 1992 TIME: 10:00 a.m.
LOCATION OF PUBLIC HEARING: Room W-100, State Capitol Building
1900 Kanawha Boulevard E
Charleston, WV 25305

COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH X
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Russell Rollyson
Rm W-212, State Capitol
1900 Kanawha Blvd, E
Charleston, WV 25305

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



3.60

State Auditor
Title 155
Series 1

FACTS AND CIRCUMSTANCES CONSTITUTING EMERGENCY

The immediate need for the emergency rule allowing the State Auditor to appoint a member of his staff as deputy commissioner of forfeited and delinquent lands is evident in the number of complaints received by this office. Deputy commissioners have repeatedly refused to comply with §11A-4-5 and §11A-4-10 of the West Virginia Code, causing a hardship upon individual taxpayers, who wish to redeem their property, but because of the actions of deputy commissioners, are unable to. The failure of deputy commissioners to act upon the properties that have been certified to them is also costing the individual counties money, by not making the property taxable. Not only that, the individual who wishes to redeem or purchase a piece of property is being required to pay a higher amount, because of the additional taxes and interest accruing. This is clearly not the intent of the West Virginia Code, which is to make the auditor's office merely a conduit through which the taxes on such lands might be collected or sold at a land sale to achieve the statutory purpose of passing title to a more responsible owner. As one is probably aware of, there is approximately 17,000 pieces of property that remain unacted upon by the deputy commissioners in the various fifty-five counties. It is not the intention of the Auditor's Office to act upon all 17,000, but only to deal with the ones that we receive requests upon. Furthermore, prior to the State Auditor appointing a member of his staff as special deputy commissioner, the current deputy commissioner would have an opportunity to comply with their statutory responsibilities. One may ask the question, why not replace the deputy commissioner with a new one. In most counties, that is not a practical solution, because of several factors. The chief one being that it is impossible to find a qualified attorney to take the position, because of the amount of work involved in conducting a delinquent land suit and the low pay involved. (\$10.00 + 15% on each sale or \$10.00 + 15% of the total taxes and interest due). Even in cases where the State Auditor might be able to appoint a new deputy commissioner, it would still take time before they would be familiar with the Code in order to file suit. This delay would be expensive to the individuals redeeming their property. Even in those cases, where a new deputy commissioner would be appointed, it would be better to have a member of the State Auditor's Office staff familiar with the statutes to go ahead and serve as special deputy commissioner while the new deputy commissioner becomes acclimated to the position.

Furthermore, State law places a legal duty on the Auditor to sell delinquent lands by appointing deputy commissioners to conduct public sales. Since deputy commissioners have been refusing to conduct such sales, the Auditor is placed in a position of non-compliance with State law. This non-compliance causes expenses to the taxpayers by forcing them unnecessarily to file lawsuits so property may be sold or redeemed.

For the foregoing reasons, this proposed Legislative rule is necessary for the immediate preservation of public welfare and to prevent substantial harm to the public interest.

The sole purpose of this rule is to allow the State Auditor's Office to serve the citizens of West Virginia in accordance with State Law.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Appointment of Special Deputy Commissioner of Forfeited and Delinquent Lands

Type of Rule: X Legislative Interpretive Procedural

Division of Forfeited and Delinquent Lands
 Agency State Auditor's Office Address Building 1, Room 212-W,
1900 Kanawha Boulevard, East, Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	N/A	N/A	N/A	N/A	N/A
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

This rule is a revenue enhancement with no increase cost to the Auditor's Office.

3. Objectives of these rules:

To better serve the citizens of West Virginia.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

NO.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

SEE ATTACHED SHEET.

DATE: November 5, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Glen B. Gainer, Jr., State Auditor

EMERGENCY RULE TITLE: Appointment of Special Deputy Commissioner
of Forfeited and Delinquent Lands.

1. Date of filing: November 5, 1992
2. Statutory authority for promulgating the emergency rule:
W.Va. Code 11A-4-5; State Human Rights Commission v. Pauley,
212 S.E.2d 77(1975)
3. Date of filing of proposed legislative rule: 11-5-92
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
NO.
5. Has the same or similar emergency rule previously been filed and expired?
NO.
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare
SEE ATTACHED SHEET.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Monies that are received by the special deputy commissioner as compensation for his services will be deposited into the special operating fund of the Auditor's Office.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

The Sheriff and Treasurer of the counties will receive their portion of taxes and interest quicker, as well as making the property tax producing.

C. Economic Impact on Citizens/Public at Large.

It will decrease the amount required by the individual to redeem their property.

Date: 4 November 1992

Signature of Agency Head or Authorized Representative

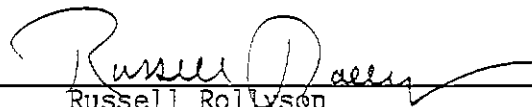
Glen B. Gainer

NOTICE OF PUBLIC HEARING

Pursuant to Section five, Article three, Chapter twenty-nine-A of the Code of West Virginia, 1931, as amended, the Forfeited and Delinquent Land Division of the State Auditor's Office shall convene a public hearing at 10:00 a.m. E.S.T. on December 7, 1992 at Room W-100, State Capitol Building, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305 for the purpose of taking evidence pertaining to the filing of proposed Legislative Rule appointing a special deputy commissioner of forfeited and delinquent lands.

Any citizen or other interested party may appear in person to present evidence. Any citizen or other interested party may submit written evidence at the public hearing or by mail to Room W-212, State Capitol Building, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305. All comments, written or oral, will be made a part of the public hearing record. The department requests that parties wishing to comment make an effort to submit written copies of their comments in order to facilitate review of the comments.

The issues to be heard shall be limited to the proposed rule. Copies of the proposed rule may be obtained by telephoning (304) 558-2262 or writing to Room W-212, State Capitol Building, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305.



Russell Rollyson
Director of Forfeited and
Delinquent Land Division

Nov 6, 1992

Entered

TITLE 155
EMERGENCY LEGISLATIVE RULE
STATE AUDITOR
DELINQUENT AND FORFEITED LANDS DIVISION

SERIES 1
APPOINTMENT OF SPECIAL DEPUTY COMMISSIONER
OF FORFEITED AND DELINQUENT LANDS

§155-1-1. General.

1.1. Scope. -- This legislative rule establishes when the State Auditor may appoint a special deputy commissioner of delinquent and forfeited lands to conduct a public sale of land.

1.2. Authority. -- W.Va. Code 11A-4-5; State Human Rights Commission v. Pauley, 212 S.E.2d 77(1975).

1.3. Filing Date. -- _____.

1.4. Effective Date. -- _____.

§155-1-2. Appointment of Special Deputy Commissioner.

2.1. When any duly appointed Deputy Commissioner of Forfeited and Delinquent Lands fails to file suit to conduct a sale of land within ten (10) days after written request of the State Auditor, the State Auditor may appoint an employee of the State Auditor's Office to act as a Special Deputy Commissioner to conduct such sale. The Special Deputy Commissioner must meet the qualifications set forth in Chapter 11-A, Article 4, Section 5 of the West Virginia Code (Code), as amended.

2.2. Any sale conducted under this rule must comply with all provisions in Chapter 11A, Article 4 of said Code.

2.3. For sales held under this rule, fees designated by the Code to go to a Deputy Commissioner shall be deposited in the special operating fund that has been established by the Auditor for the land division in accordance with Chapter 11A, Article 4, Section 7 of the Code.