

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

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FILED

Nov 5 10 39 AM '92

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #7

Effective Date

NOTICE OF AN EMERGENCY RULE

DIVISION OF FORFEITED AND DELINQUENT LANDS  
AGENCY: STATE AUDITOR'S OFFICE TITLE NUMBER: 155

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

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: 1 (one)

TITLE OF RULE BEING FILED AS AN EMERGENCY: Appointment Of Special

Deputy Commissioner Of Forfeited and Delinquent Lands

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See attached statement.

3.60

Use Additional Sheets If Necessary.

Allen B Gainer, Jr  
Signature

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.

FILED

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

Nov 5 10 40 AM '92

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

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§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.



KEN HECHLER  
Secretary of State

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(Plus all the volunteer  
help we can get)

December 9, 1992

**NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE**

**AGENCY:** State Auditor's Office

**RULE:** New Rule, Series 1 Appointment of Special Deputy  
Commissioner of Forfeited & Delinquent Lands

**DATE FILED AS AN EMERGENCY RULE:** November 5, 1992

**DECISION NO.** 35-92

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.

KEN HECHLER  
Secretary of State

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

DEC 9 10 58 AM '92

**FILED**

KEN HECHLER  
Secretary of State

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

#### DECISION

#### EMERGENCY RULE DECISION (ERD 35-92)

AGENCY: State Auditor's Office  
RULE: New Rule, Series 1, Appointment of Special Deputy  
Commissioner of Forfeited & Delinquent Lands  
FILED AS AN EMERGENCY RULE: November 5, 1992

- par. 1 The State Auditor's Office 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 Auditor's Office filed this emergency rule with supporting documents with the Secretary of State November 5, 1992 and failed to file with the LRMRC.

par. 7 It is the determination of the Secretary of State that the Auditor's Office has not complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code 11A-4-5 reads in part:

There shall be for each county in the State a deputy commissioner of forfeited and delinquent lands. The auditor shall appoint such deputies as soon as may be after this article takes effect (March 8, 1947) and shall make new appointments from time to time thereafter whenever vacancies occur, or when in his judgment it is deemed advisable. The auditor may make rules respecting the tenure of deputy commissioners. In the absence of such rules, the deputy for each county shall, so long as he satisfies the requirements of this section in respect to professional qualifications and bonding, continue to act without reappointment until the auditor designates his successor.

Appointments shall be limited to persons duly licensed to practice law in the State, and so far as possible shall be made for each county from among attorneys residing and practicing law therein. If, however, there is in the opinion of the auditor no qualified lawyer in a county available for appointment, he shall appoint a member of the bar of another county, preferably in the same judicial circuit.

Whenever in respect to any land the deputy commissioner, in his own judgment or in the opinion of the auditor, is disqualified because of his personal interest, or because of his representation of clients in matters affecting such land, the auditor may appoint a special deputy to deal with that land. All provisions of this article in respect to the rights, duties, liabilities and qualifications of the deputy commissioner shall be applicable to the special deputy.

par. 9 It is the determination of the Secretary of State that the Auditor's Office 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 Auditor's Office are as follows:

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 the deputy commissioners, are unable to. The failure of deputy commissioners to act upon 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 55 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 appointment 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.

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). Although the purposes of this rule is admirable, the agency has failed to show any true emergency for this rule.

par. 14 This decision shall be cited as Emergency Rule Decision 35-92 or ERD 35-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Auditor's Office, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Dec 9 10 59 AM '92

FILED