

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #3

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1991 FEB -7 PM 2:41  
OFFICE OF THE SECRETARY OF STATE

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

AGENCY: Department of Administration TITLE NUMBER: 148

CITE AUTHORITY WV Code 5A-4-1 & 2, 5A-3-42 & 48

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: Series 7

TITLE OF RULE BEING PROPOSED: Smoking Procedures

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.

Chapman



STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION

State Capitol  
Charleston, WV 25305

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Gaston Caperton  
Governor

Chuck Polan  
Secretary

MEMORANDUM

TO: The Honorable Ken Hechler  
Secretary of State

FROM: Chuck Polan *CP*  
Secretary

DATE: February 7, 1991

RE: Smoking Regulations

A comment period was held on the proposed rule, ending on January 31, 1991. Attached are the comments received. While the petition attacks the authority to issue this rule, we do not believe that we have overstepped our authority in the issuance of this rule. Therefore, the proposed rule is filed for your review.

CP/abh

DATE: February 6, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Department of Administration

LEGISLATIVE RULE TITLE: Smoking Procedures

1. Authorizing statute(s) citation 5A-4-1 & 2, 5A-3-42 & 48

2. a. Date filed in State Register with Notice of Hearing:

December 26, 1990

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of hearing (s): Comment period held from December 26, 1990  
to January 31, 1991.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments:

Attached X No comments received         

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:  
(be exact)

f. Name and phone number of agency person to contact for additional information:

Diana Stout, Department of Administration 348-2300

Capitol Complex Room F-119

Charleston, WV 25305

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Public Comment Period Filed December 26, 1990

---

b. Date of hearing: Public Comment period held from December 26, 1990  
to January 31, 1991.

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

December 26, 1990

---

d. Attach findings and determinations and reasons:

Attached Letter from Thornton Cooper dated January 31, 1991.

Letter and petition signed by several employees.



4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government. None

B. Economic Impact on Political Subdivisions; Specific Industries;  
Specific groups of citizens. None

C. Economic Impact on Citizens/Public at Large. None

Date: February 6, 1991

Signature of Agency Head or Authorized Representative

Carl P. [unclear]

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1991 FEB -7 PM 2:42

148 CSR 7

1990 DEC 26 PM 1:48

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

TITLE 148

LEGISLATIVE RULES  
DEPARTMENT OF ADMINISTRATION

SERIES 7

RECEIVED

SMOKING PROCEDURES

DEC 26 1990

Legislative Rule Making  
Review Committee

Section 148-7-1. General

1.1 Scope.--The purpose of this rule is to establish procedures to ensure a healthful, smoke-free environment for each State employee and the public as they transact business with or receive service from the State in buildings, offices or other space, motor vehicles and aircraft owned or leased by the State and under the control of the Department of Administration. This rule does not apply to the offices and areas of the West Virginia Supreme Court of Appeals, the Legislature or constitutional officers.

1.2 Authority.--West Virginia Code 5A-4-1, 5A-4-2, 5A-3-42, and 5-3-48.

1.3 Filing Date.--December 19, 1990.

1.4 Effective Date.--

Section 148-7-2. Definitions

2.1 Appointing Authority: An agency head or his/her designee, such as agency supervisors, section or unit heads, or other individuals designated by the agency head.

2.2 Cigarette: Any lighted tobacco product.

2.3 ETS: Environmental tobacco smoke; secondhand or sidestream smoke.

2.4 Proper Ventilation: Smoke exhausted to the outside. The system used to expel the smoke shall not diminish the working conditions of the employees' environment; for example, the method may not affect the building's heating and cooling system.

2.5 Workplace/Worksite: Any office, facility, building, etc., owned or operated by the State covered by this rule,

including State-owned/leased motor vehicles and aircraft.

### Section 148-7-3. Applicability

This rule is applicable to buildings, offices, other space, motor vehicles and aircraft owned or leased by the State and under the control of the Department of Administration. This rule does not apply to the offices and areas of the West Virginia Supreme Court of Appeals, Legislature or constitutional officers. State facilities such as hospitals, mental hospitals, prisons and/or regional jails shall comply with this rule to the maximum extent possible. The only exceptions will be by the express mutual approval of the affected appointing authority and the Secretary of the Department of Administration. All exceptions will be made with public health and safety being the prime consideration.

### Section 148-7-4. Procedures

4.1 It shall be the responsibility of the appointing authority to ensure that all workplaces maintain a healthful, smoke-free environment and to make both employees and the public aware of their responsibility to comply with the smoking restrictions.

(a) Appointing authorities shall establish a smoke-free environment in State workplaces.

(b) Appointing authorities must prohibit smoking in worksites for employees and the public if accommodations cannot be made without exposing individuals to the effects of secondhand or sidestream smoke.

(c) Appointing authorities may make reasonable accommodations for smokers, wherever possible and whenever practical, as follows:

(1) Appointing authorities may establish smoking areas at worksites, as long as the areas are properly ventilated and/or employees and the public have a smoke-free environment with no material effects from secondhand or sidestream smoke.

(2) Appointing authorities are not required to make special accommodations for individual smoking areas, but may do so in accordance with this section.

(d) In the application of this rule, anytime there is a conflict between the rights of smokers and non-smokers, the rights of non-smokers shall prevail.

4.2 Public waiting rooms and receiving areas shall be smoke-free, and smoking restrictions shall be actively enforced by the individuals responsible for those areas.

(a) The appointing authority shall post signs, worded as specifically as possible, designating smoking and non-smoking areas, if smoking areas exist.

(b) Receptacles should be placed outside all buildings to encourage persons to extinguish smoking products before entering, and an overview of the agency's smoking restriction policy should be posted in all waiting rooms and reception areas.

(c) The agency shall incur all reasonable costs of the signs, receptacles, etc., and their installation.

4.3 Smoking restrictions shall be enforced at all conferences, meetings, and training sessions conducted by the State and shall be consistent with all other provisions of this rule. All non-State entities using State workplaces must conform to this rule.

4.4 Appointing authorities are encouraged to provide support and assistance to employees and the public in the implementation and enforcement of this rule.

4.5 All related policies shall be enforced by the appointing authorities.

(a) This rule does not supersede any local ordinances or State statutes that are more restrictive and applicable, nor does it permit discrimination against smokers applying for positions.

(b) While employers do have the right to make rules for their own premises, employers may not prohibit lawful behavior and the use of lawful tobacco products outside the site of the workplace under this rule.

Thornton Cooper  
3015 Ridgeview Drive  
South Charleston, WV 25303  
744-9616; 340-0385  
January 31, 1991

The Honorable Ken Hechler  
Secretary of State  
State Capitol Building  
Charleston, WV 25305

Re: Smoking Restriction Guidelines  
for West Virginia State Buildings.  
148 CSR 7

Dear Mr. Hechler:

By this letter I am offering comments in support of the emergency rule (and any similar permanent rule) filed by the West Virginia Department of Administration last month and bearing the title "Smoking Restriction Guidelines for West Virginia State Buildings". 148 CSR 7.

As you know, I am an attorney, a public employee, a resident of West Virginia, an individual who often visits the State Capitol Building, a member of the Board of Directors (and currently the Vice President) of the American Lung Association of West Virginia, Inc. (ALAWV), and a vocal supporter of protecting the rights of nonsmokers. I am also a member of the West Virginia Tobacco Control Coalition.

Chuck Polan, the Secretary of Administration, and his staff should be applauded for promulgating this rule, which benefits thousands of West Virginians.

For centuries tobacco smoke has been considered the possible cause of health problems for smokers and a nuisance to nonsmokers. During the last several years, mounting evidence has demonstrated that the health effects are much worse. Cigarette smoking is the single most preventable cause of death in the United States and causes about 400,000 premature deaths among smokers in this nation each year. According to a newly released study discussed in the journal of the American Heart Association, secondhand cigarette smoke is the third most preventable cause of death in the United States and causes about 53,000 premature deaths among nonsmokers in the United States each year.

I have enclosed medical literature and clippings on these subjects.

Paragraph 8 of the justification for the emergency rule states:

Tobacco smoke is known to cause lung cancer, thus a smokefree environment will reduce the harm to the public.

The foregoing is a gross understatement. In addition to causing lung cancer, tobacco smoke causes other cancers, emphysema, heart disease, and other diseases, collectively killing about 400,000 smokers and an estimated 53,000 nonsmokers in the United States each year. These mortality figures, do not, of course include the discomfort, misery, lung impairment, other disease, and added expense that cigarette smoke causes smokers and nonsmokers exposed to secondhand smoke.

Tobacco smoke, including secondhand smoke, includes carbon monoxide, radioactive polonium, nicotine, cyanide, and about 4,000 other components. It is indeed unfortunate that in 1991 there are still smokers who, in spite of mountains of medical evidence, think they should have a "right" to smoke in enclosed public areas used by nonsmokers.

I would like to address some issues raised by the rule:

A. IS THERE AN EMERGENCY?

State agencies routinely file "emergency" rules even when the rules are only obliquely related to situations constituting a peril to health, safety, and/or welfare.

However, this rule has a much more demonstrable and calculable relationship to health, safety, and welfare than do most "emergency" rules. According to figures from the 1990 Census, about 0.72% of Americans live in West Virginia. West Virginians die at a higher rate from smoking-related illnesses than do Americans as a whole. But even if the incidence of smoking-related death in West Virginia were identical to the national incidence of such death, 0.72% of 400,000 would translate to about 2,880 premature smoking-caused deaths among smokers in West Virginia annually; 0.72% of 53,000 would translate to about 382 premature deaths annually (more than one per day) among nonsmokers in West Virginia caused by exposure to secondhand smoke.

It is certainly arguable, therefore, that a continuing health emergency exists with respect to exposure of West Virginians to tobacco smoke. This emergency rule has already advanced the interests of health in West Virginia (and may have already saved one or more lives). The rule has certainly improved the air quality in the corridors of the State Capitol Building.

Accordingly, the emergency rule addresses a valid emergency and should be upheld in that context.

B. DOES THE WEST VIRGINIA DEPARTMENT OF ADMINISTRATION HAVE THE AUTHORITY TO ISSUE RULES RELATING TO CONDUCT IN STATE BUILDINGS AND STATE VEHICLES?

By its own terms, the rule is limited in scope to "buildings, offices or other space, motor vehicles and aircraft owned or leased by the State and under the control of the Department of Administration." Moreover, the rule "does not apply to the offices and areas of the West Virginia Supreme Court of Appeals, the Legislature or constitutional officers." The beneficiaries of the rule are members of the public and state employees who transact business or receive service in the buildings, offices, aircraft, and vehicles alluded to earlier.

Under §5A-1-2 of the West Virginia Code, "all records, responsibilities, obligations, assets and property, of whatever kind and character," were transferred from the Division of Finance and Administration to the Department of Administration. Under §5A-1-3, the Secretary of Administration has control and supervision over that Department and is responsible for the work of each of its employees.

Under §5A-3-1, the Legislature created the Purchasing Division of the Department of Administration. The provisions of Article 3 of Chapter 5A "shall apply to all of the spending units of state government, except as otherwise provided" by that article or by other law. §5A-3-1. The Director of the Purchasing Division is appointed by the Secretary of Administration. §5A-1-2.

Under §5A-3-38, "no department, agency or institution of state government shall lease, or offer to lease, as lessee, any grounds, buildings, office or other space except in accordance with this article"... (except the Division of Highways).

Under §5A-3-39, the Secretary of Administration is "authorized to lease, in the name of the state, any grounds, buildings, office or other space required by any department, agency or institution of state government"...

Under §5A-3-40, the Secretary of Administration "shall have sole authority to select and to acquire by contract or lease, in the name of the state, all grounds, buildings, office space or other space, the rental of which is necessarily required by any spending unit"... Moreover, the Secretary is empowered by this section to prevent spending units from making permanent changes in buildings unless he or she determines that a particular change "is necessary for the proper, efficient and economically sound operation of the spending unit."

Under §5A-3-41, the Secretary of Administration is empowered to sign leases "and other instruments for grounds, buildings, office or other space".

It is clear, then, that the West Virginia Legislature empowered the Secretary of Administration to exercise substantial powers with respect to buildings and offices.

Furthermore, §5A-3-42 states that the Secretary of Administration "shall have the power to promulgate such rules and regulations as he may deem necessary to carry out the provisions of sections thirty-eight, thirty-nine, forty and forty-one of this article."

Moreover, §5A-3-48 states that the Secretary of Administration "shall promulgate rules and regulations relating to the ownership, purchase, use, maintenance, and repair of all motor vehicles and aircraft owned by the state of West Virginia and in the possession of any department, institution, or agency thereof"...(except for the Division of Highways and the Department of Public Safety).

In §5A-4-1, the Legislature created the General Services Division of the Department of Administration "for the purpose of having the care, custody and control of the capitol buildings." The Secretary of Administration appoints the Director of the GSD. §5A-1-2. Under §5A-4-2, the Director of the GSD is charged with "the full responsibility for the care, control and custody of the capitol buildings..." (emphasis added)

From the above detailed discussion of the powers of the Secretary of Administration, I submit that his or her control over certain state buildings, offices, vehicles, and aircraft is sufficient and that his or her rulemaking powers are sufficient to sustain the Secretary's authority to promulgate the rule in question.

C. I THERE ANY MERIT IN THE PETITION FILED ON JANUARY 4, 1991, IN OPPOSITION TO THE RULE?

Earlier this month, on January 4, 1991, a typed petition dated January 2, 1991, and bearing the signatures of several dozen employees of the Public Service Commission of West Virginia, was filed with your office in opposition to the rule in question. (I also work for that state agency.)

The main thrust of that petition is that the powers of the Secretary of Administration do not extend to the PSC building, which is located in Charleston at 201 Brooks Street. Rather than elaborating on where the Department of Administration's authority ends and where the Chairman of the PSC's powers begin, I would point out that the argument of the petitioners in academic for at least four (4) reasons:

(1) By its own terms, the rule in question only extends to those "buildings, offices or other space, motor vehicles and aircraft owned or leased by the State and under the control of the Department of Administration." (emphasis added) Hence the rule, by its own terms, is self-limiting. The rule does not claim to extend to the PSC building.

(2) The restrictions on smoking set forth in the rule in question are very similar to a codification of the case law with respect to grievances filed by nonsmoking state employees pursuant to Article 6A of Chapter 29 of the West Virginia Code. That article relates to the Education and State Employees Grievance Board. Grievances relate, among other things to claims..."alleging... any action, policy or practice constituting a substantial detriment to or interference with effective job performance or the health and safety of the employees." §29-6A-2(i). Hence the rejection of the rule would not nullify the limitations on smoking established pursuant to such case law. See, for example, Harnan v. West Virginia Department of Human Services, Docket # DHS-88-003, West Virginia Education and State Employees Grievance Board.

(3) The restrictions on smoking set forth in the rule in question are very similar to a personnel policy approved by the West Virginia Personnel Board pursuant to its authority and announced by the Director of Personnel, effective December 1, 1990. The authority of the Board and that Director are set forth in Article 6 of Chapter 29 of the West Virginia Code. The individuals who signed that petition are clearly subject to that policy, a copy of which is attached hereto. Hence the rejection of the Secretary of Administration's rule would not result in the reinstatement of smoking in the PSC building.

(4) Several weeks ago, PSC Chairman Boyce Griffith issued a memorandum stating that the December 1, 1990, policy superseded a less-restrictive smoking policy that he had announced in March 1990. Hence the rejection of the Secretary of Administration's rule would not result in a return to that superseded policy.

#### CONCLUSION.

For all of the above reasons and that set forth in the attachments and enclosures, I request that your office approve the rule in question.

Sincerely,

  
Thornton Cooper

... but dismay to displaced work-

Company chairman Emmett Boyje operates the plant with supervisors and a steadily rising pool of replacements, who now number 725. Company officials first called the replacements temporary but later, after declaring a negotiating impasse, changed their status to permanent.

More than 1,700 union workers have picketed at Ravenswood since company officials ordered them off the job late on Oct. 31. Union leaders call the labor dispute a lockout, but company officials, having later invited workers

Company and union officials agree that who fills the job depends on the legitimacy of the impasse.

Company officials declared the impasse 20 days into the labor dispute, having made no changes in their Oct. 31 offer.

Some labor experts say a company cannot unilaterally declare an impasse while the other side still submits new and substantially different offers.

Union leaders have contested the impasse to the National Labor Relations Board, which will decide whether workers get their jobs back and receive back pay.

*Gazette 1/10/91 p 2 B*

## Passive smoke major killer, study finds

DALLAS (AP) — Passive cigarette smoke kills 53,000 non-smoking Americans each year, making it the third-leading preventable cause of death, the American Heart Association reported Wednesday.

Researchers at the University of California-San Francisco established a link between passive smoke and the development of

heart disease, said an article in today's editions of Circulation, a journal of the Dallas-based heart association.

"Passive smoking is a much bigger problem than anyone thought," said Dr. Stanton Glantz, the article's author and an associate staff member of the Cardiovascular Research Institute at UCSF.

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Gaston Caperton  
Governor

Michael T. Smith  
Director

STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION  
DIVISION OF PERSONNEL

M E M O R A N D U M

STATE PERSONNEL  
BOARD

John A. Canfield, Chairman  
Rev. Paul J. Gilmer, Member  
Sharon H. Lynch, Member  
Thomas P. Maroney, Member  
Roger Morgan, Member

TO: All Appointing Authorities  
FROM: Michael T. Smith, Director, Division of Personnel *Michael T. Smith*  
DATE: November 2, 1990  
RE: Smoking Policy

On October 18, 1990, the State Personnel Board approved the attached smoking policy. This policy goes into effect on December 1, 1990 and contains responsibilities for all appointing authorities.

After you review the policy, you may call the Employee Relations section of the Division of Personnel at 348-3350. They will be glad to assist you with its implementation.

MTS:MDI:mdi

Attachment

WEST VIRGINIA DIVISION OF PERSONNEL  
**POLICY**

**POLICY DOP-PI**

**SMOKING RESTRICTIONS IN THE WORKPLACE**

**I. PURPOSE**

- A. The purpose of this policy is to establish procedures to ensure the right to a healthful, smoke-free environment for each State employee and the public as they transact business with or receive service from the State. Recent studies on the effects of passive smoke inhalation by non-smokers conclude that exposure to secondhand smoke can be harmful to one's health. The working environment should present no unnecessary risk of physical harm or discomfort from environmental tobacco smoke. Furthermore, residents of State facilities, applicants, clients, and visitors should not be exposed to cigarette or any other environmental tobacco smoke. We therefore find it necessary to implement a policy relating to smoking restrictions in all workplaces operated by the State.

**II. DEFINITIONS**

- A. Appointing Authority: An agency head or his/her designee (such as agency supervisors, section or unit heads, or other individuals designated by the agency head).
- B. Cigarette: Any lighted tobacco product.
- C. ETS: Environmental tobacco smoke; secondhand or sidestream smoke.
- D. Proper Ventilation: Smoke exhausted to the outside. The system used to expel the smoke shall not diminish the working conditions of the employees' environment; for example, the method may not affect the building's heating and cooling system.
- E. Workplace/Worksite: Any office, facility, building, etc., operated by the State, including State-owned, leased vehicles.

**III. POLICY**

- A. It will be the responsibility of the appointing authority to ensure that all workplaces maintain a healthful smoke-free environment and to make both employees and the public aware of their responsibility to comply with the smoking restrictions.
1. Appointing authorities have the right and duty to establish a smoke-free environment in State workplaces.
  2. Appointing authorities may make reasonable accommodations for smokers, wherever possible and whenever practical. For example:
    - a. Appointing authorities may establish smoking areas at worksites, as long as the areas are properly ventilated and/or employees and the public have a smoke-free environment with no material effects from secondhand or sidestream smoke.
    - b. Appointing authorities must prohibit smoking in worksites for employees and the public if accommodations cannot be made without exposing individuals to the effects of secondhand or sidestream smoke.



## SMOKING RESTRICTIONS IN THE WORKPLACE POLICY DOP-P1

- c. Appointing authorities are not required to make special accommodations for individual smoking areas, but may do so as referenced in this section.
  - d. In the application of this policy, anytime there is a conflict between the rights of smokers and non-smokers, the rights of non-smokers shall prevail.
- B. Public waiting rooms and receiving areas shall be smoke-free, and smoking restrictions shall be actively enforced by the individuals responsible for those areas.
1. The appointing authority shall post signs (worded as specifically as possible) designating smoking and non-smoking areas, if such areas exist.
  2. Receptacles should be placed outside all buildings to encourage persons to extinguish smoking products before entering, and an overview of the agency's smoking restriction policy should be posted in all waiting rooms and reception areas (example attached).
  3. The agency shall incur all reasonable costs of the materials and their installation.
- C. Smoking restrictions shall be enforced at all conferences, meetings, and training sessions conducted by the State and shall be consistent with all other provisions of this policy.
1. All non-State entities using public facilities must conform to the policy.
  2. No employees shall be required to subject themselves to the exposure of ETS in conferences or other gatherings that are conducted by organizations outside of State government.
    - a. Employees may ask the person in charge of such meetings to require a smoke-free environment.
    - b. If the person in charge fails to enforce smoking restrictions, the employees may return to their regular workplaces.
- D. Appointing authorities are encouraged to provide support and assistance to employees in the implementation and enforcement of this policy.
1. Appointing authorities are encouraged to provide and/or refer employees to smoking cessation programs. Attendance at smoking cessation programs conducted and/or sponsored by the State during employees' normal working hours shall be considered an appropriate use of work time.
  2. Prohibiting smoking on the employer's premises and selling cigarettes appears to be in conflict, therefore, appointing authorities may want to consider the removal of cigarette vending machines or prohibiting the sale of cigarettes on the premises.
  3. Appointing authorities may request assistance from the Division of Personnel and/or the Division of Health when instituting smoking restrictions to ensure that workers' concerns are taken into consideration.
  4. Employees who desire to smoke may do so during their scheduled or any other authorized break period(s) provided they use a designated smoking area.



## SMOKING RESTRICTIONS IN THE WORKPLACE POLICY DOP-P1

- E. All related policies shall be enforced by the appointing authorities.
1. This policy does not supersede any local ordinances or State statutes that are more restrictive and applicable to your workplace, nor does it permit employers to discriminate against smokers who apply for positions.
  2. While employers do have the right to make rules for their own premises, to prohibit lawful behavior and the use of lawful tobacco products outside the site of the workplace may be a violation of an individual's right to privacy.
- F. State facilities such as hospitals, mental hospitals, and/or prisons shall comply with the aforementioned policy to the maximum extent possible. The only exceptions will be by the express mutual approval of the affected appointing authority and the Director of the Division of Personnel. All exceptions will be made with public health and safety being the prime consideration.

#### IV. REFERENCES

- A. West Virginia Code, Chapter 29, Article 6, Section 7, et. seq.
- B. West Virginia Division of Personnel Rules and Regulations, Section 4.04(b).
- C. Hartman versus the West Virginia Department of Human Services, Docket #DHS-88-003, West Virginia Education and State Employees Grievance Board.

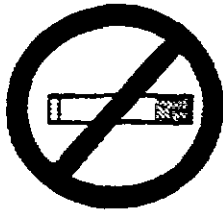
V. EFFECTIVE DATE: December 1, 1990.

Approved and Issued By:

*Michael T. Smith*

Michael T. Smith, Director of Personnel

Date: October 30, 1990



## **NO SMOKING POLICY**

**AS A PROVIDER OF SERVICES TO THE  
GENERAL PUBLIC, WE CONSIDER IT AN  
OBLIGATION TO PROVIDE A TOBACCO  
SMOKE-FREE ENVIRONMENT FOR OUR  
EMPLOYEES AND FOR THE PUBLIC.**

**WE HAVE PROVIDED DESIGNATED  
SMOKING AREAS WHICH ARE LISTED  
BELOW. SMOKING IS PROHIBITED  
IN ALL OTHER AREAS.**

**THANK YOU  
FOR YOUR COOPERATION**

FILED

P.O. Box 812  
Charleston, WV 25323  
January 2, 1991

1991 JAN -4 AM 9:41

Honorable Ken Hechler  
Secretary of State  
Suite 157-K  
Capitol Building  
Charleston, WV 25305

Re: Emergency Rules For Smoking Restrictions

Dear Mr. Hechler:

We, the undersigned, request that you take immediate action to disapprove the Emergency Rules for Smoking Restrictions filed by the Department of Administration on December 26, 1990.

We request this action because the Secretary of Administration has clearly exceeded the scope of his statutory authority as referred to in Section 148-7-1.2 of this Emergency Rule. West Virginia Code Sections 5A-4-1 and 5A-4-2 give custodial authority over the capitol buildings and grounds. Only by the wildest stretch of the imagination do such duties include air pollution and in any event do not pertain to the building of the Public Service Commission. West Virginia Code Section 5A-3-42 gives the Secretary of Administration authority for "leasing for space rules and regulations", which is authority to carry out Code Sections 5A-3-38 to 5A-3-41. Clearly these latter Code Sections deal with the authority to lease, to delegate such authority, the form and length of leases, and so forth and in no way pertain to any authority as exercised in this Emergency Rule.

We request this action because there is no emergency as defined in West Virginia Code 29A-3-15(g) in that this rule is not necessary for the "immediate" preservation of the public peace, health, safety, or welfare.

We request this action because this Emergency Rule was not promulgated in compliance with Code Section 29A-3-15(e) in that this rule is intended to avoid and evade West Virginia Code provisions for the institution and approval of proposed rules. The Smoking Policy of the Division of Personnel, effective December 1, 1990, was in clear violation of a number of West Virginia statutes including State Administrative Policies, Chapter 29A. This Emergency Rule of the Department of Administration is intended to implement that unlawful policy without due process.

Michael L. Fletcher

Diane G. Davis

Donald P. Cook

Frank H. [unclear]

M. P. [unclear]

[unclear]

Brenda Parsons

Billy B. Bradford

D. S. [unclear]

Robert L. [unclear]

Debra J. [unclear]

Fred C. [unclear]

Steve P. [unclear]

[unclear]

J. J. [unclear] - Non Cig. Smoker

Monte D. [unclear]

Eric T. [unclear]

Wm. K. [unclear]

Randy [unclear] - Non Smoker

Chris [unclear]

[unclear]

[unclear]

Frank D. [unclear]

Camela J. [unclear]

Linda [unclear]

Alan [unclear]

Faige [unclear]

Maie [unclear]

[unclear]

Charlatti A. [unclear]

Sharon [unclear]

Gene C. [unclear]

Cynthia [unclear]

Birdie [unclear]

Carol B. [unclear]

[unclear] (H.S.)

Bechar N. [unclear]

Linda [unclear]

[unclear]

[unclear]

[unclear]

David [unclear]

[unclear]

[unclear]

[unclear]

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David J. [unclear]

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1991 JAN -4 AM 9:41

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Sue Stetts  
Scott Pitt  
Sally Pitt  
Tom Sprink

David A. Hippachus (non-smoker)

Gary T. Jarrell (non-smoker)

Gypsy J. Jop (non-smoker)

Lupe Wilson

Robert Williams (non-smoker who believes  
smokers have a right to be heard  
before a final smoking policy is implemented)

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