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(Plus all the volunteer
help we can get)

January 14, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

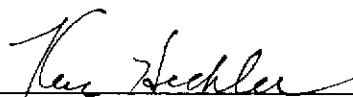
AGENCY: Board of Education

RULE: Amendments, Series 172, Handbook on Planning School
Facilities (6200)

DATE FILED AS AN EMERGENCY RULE: December 28, 1990

DECISION NO. 5-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

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OFFICE OF THE SECRETARY OF STATE

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STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

DECISION EMERGENCY RULE DECISION
(ERD 5-91)

AGENCY: West Virginia Board of Education
RULE: Amendments, Series 172, Handbook on Planning School
Facilities (6200)
FILED AS AN EMERGENCY RULE: December 28, 1990

- par. 1 The Board of Education (Board) has filed emergency amendments to the above rule.
- par. 2 West Virginia Code 29A-3-15A 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-3-15a(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 ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Board has filed this emergency rule with supporting documents with the Secretary of State on December 28, 1990.

par. 7 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §18-2-5 reads in part:

The state board is authorized and empowered from time to time, to promulgate such rules and regulations as it may deem necessary and convenient to insure the full implementation of its powers and duties authorized under this article.

par. 9 It is the determination of the Secretary of State that the Board 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.

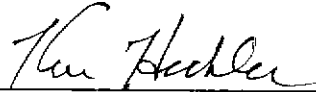
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Board are as follows:

The emergency is required in order that county boards of education will have appropriate guidelines for submission of facilities plans in order that the current School Building Authority building program would be conducted in a legal and appropriate manner, and that these projects not be subject to litigation regarding failure to comply with this policy.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in 29A-3-15(g) . . . "prevent substantial harm to public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 5-91 or ERD 5-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with WV Board of Education, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

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