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Form #4

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WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Election Commission TITLE NUMBER: 146

CITE AUTHORITY: § 3-8-8

AMENDMENT TO AN EXISTING RULE: YES NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Corporate Political Activity

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

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TITLE 146
LEGISLATIVE RULE
ELECTION COMMISSION

OFFICE OF THE CLERK
SECRETARY OF STATE

SERIES 1
CORPORATE POLITICAL ACTIVITY

§146-1-1. General.

1.1. Scope. -- These ~~regulations~~ rules establish general rules on corporate political activity.

1.2. Authority. -- W. Va. Code §3-8-8.

1.3. Filing Date. --

1.4. Effective Date. --

2.2.b. Registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel, and their families;

2.2.c. The establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation;

§146-1-2. Definitions Of Terms As Used In These Regulations:

2.2.d. The payment for legal or accounting services rendered to or on behalf of any political committee of a political party other than services attributable to activities which directly further the election of a designated candidate or candidates for office if the corporation paying for the services is the regular employer of the individual rendering the services. This exclusion shall not be applicable if additional employees are hired for the purpose of rendering services or if additional employees are hired in order to make regular employees available;

2.1. "Candidate's committee" means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

2.2. "Contribution or Expenditure" means any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, political party or committee, organization, or any other person in connection with any election to any of the offices referred to herein. The terms contribution and expenditure shall not include:

2.2.e. The payment for legal or accounting services rendered to or on behalf of a political committee solely for the purpose of ensuring compliance with this rule, if the corporation paying for the services is the regular employer of the individual rendering the services, but amounts paid or incurred for these services shall be reported in accordance with WV Code 3-8-5a. This exclusion shall not be applicable if additional employees are hired for the purpose of rendering services or if additional employees are hired in order to make regular employees available;

2.2.a. Communications by a corporation to its stockholders and executive or administrative personnel and their families on any subject;

2.2.f Any activity which is specifically permitted by this rule.

2.3. "Corporate Political Action Committee" means an organization that comes into existence by specific written authorization of the Board of Directors, or equivalent governing body, of one (1) or more corporation(s) the purpose of which is to solicit funds for, and make expenditures and contributions on behalf of political committees as defined herein.

2.14. "Corporation" means any entity legally incorporated, whether under the laws of West Virginia or any other state or any foreign country.

2.25. "Election Officer" means the officer or official who receives the ~~pre-candidacy filing made by individuals running for public office~~ Statement of Organization of a political committee, and includes the Secretary of State, the county clerk, and the municipal clerk or recorder, as set forth in W. Va. Code ~~§3-1B-1 et seq~~ §3-8-4.

2.36. "Executive or Administrative Personnel" means individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional or supervisory responsibilities.

~~(a)~~2.6.a. This definition includes:

~~(1)~~2.6.a.1. The individuals who run the corporation's business such as officers, other executives and plant, division and section managers; and

~~(2)~~2.6.a.2. Individuals following the recognized professions, such as lawyers and engineers.

~~(b)~~2.6.b. This definition does not include:

~~(1)~~2.6.b.1. Professionals who are represented by a labor organization;

~~(2)~~2.6.b.2. Salaried foremen and other salaried lower-level supervisors having direct supervision over hourly employees;

~~(3)~~2.6.b.3. Former or retired personnel who are not stockholders; or

~~(4)~~2.6.b.4. Individuals who may be paid by the corporation, such as consultants, but who are not employees, within the meaning of 26 CFR 31.3401(c)-1 of the corporation for the purpose of income withholding tax on employee wages under Internal Revenue Code of 1954, §3402.

~~(c)~~2.6.c. Individuals on commission may be considered executive or administrative personnel if they have policymaking, managerial, professional or supervisory responsibility and if the individuals are employees within the meaning of 26 CFR 31.3401(c)-1 of the corporation for the purpose of income withholding tax or employee wages under the Internal Revenue Code of 1954, §3402.

~~(d)~~2.6.d. The Fair Labor Standards Act, 29 U.S.C. 201, et seq. and the regulations issued pursuant to that Act, 29 CFR 541, may serve as a guideline in determining whether individuals have policymaking, managerial, professional or supervisory responsibilities.

2.47. "Families" means spouses and unemancipated children.

2.58. "Person" means any individual, partnership, committee, association, corporation and any other organization or group of persons.

2.9. "Political Action Committee" means a committee organized by one or more persons for the purpose of supporting or opposing the nomination or election of one or more candidates. The following are types of political action committees:

2.9.a. A corporate political action committee, as that term is defined by subsection 2.3 of this rule;

2.9.b. A separate segregated fund established by a membership organization;

2.9.c. An unaffiliated political action committee.

2.10. "Political Committee" means any candidate committee, political action committee or political party committee.

2.11. "Political Party Committee" means a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination or defeat of a candidate in any election.

2.12. "Political Purposes" means supporting or opposing the nomination, election or defeat of one or more candidates, supporting the administration or activities of an established political party or an organization which has declared itself a political party, supporting the administration or activities of a political committee, determining the advisability of becoming a candidate under the pre-candidacy financing provisions, and supporting the retirement of the debt of a candidate or political committee incurred for any of the purposes set forth in this subsection.

2.6. "Political Action Committee" means an organization that comes into existence by specific written authorization of the Board of Directors, or equivalent governing body, of one (1) or more corporation(s) the purpose of which is to solicit funds for, and make expenditures and contributions on behalf of, public issues or political candidates

~~and their agents, political committees or political party committees.~~

2.713. "Restricted Group" or "Restricted Class" means stockholders and their families, and executive and administrative personnel of its subsidiaries, branches, divisions, and departments and their families, of a corporation, or when applicable, the members of an incorporated association or organization or group of persons, and the stockholders and their families, and executive and administrative personnel and their families, of such members.

2.814. "Stockholder" means a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted (if it is voting stock), and has the right to receive dividends.

§146-1-3. General Prohibition.

3.1. Except as permitted below by these regulations this series, no officer of any corporation (as defined by Section 62 herein), or agent or person (as defined by Section 62 herein), on behalf of such corporation, shall directly or indirectly make, or authorize to be made, or consent to: ~~Any payment, distribution, loan, advance, deposit or gift of money or any services or anything of value belonging to such corporation, to any candidate, financial agent, political party, political committee or any other person, or make any a contribution or expenditure (as defined by subsection 2.2 herein) whatsoever in connection with election to any local or state office, or in connection with any primary election or political convention or caucus held to select candidates for any local or state office.~~

3.2. No candidate, ~~financial agent, political party committee,~~ political committee or any other person shall knowingly accept or receive any payment prohibited by this section.

3.3. No corporation shall facilitate the making of contributions as further described in this subsection:

3.3.a. Corporations (including officers,

directors or other representatives acting as agents of corporations) are prohibited from facilitating the making of contributions to candidates or political committees, other than to the separate segregated funds of the corporations. Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with any candidate for election. A corporation does not facilitate the making of a contribution to a candidate or political committee if it provides goods or services in the ordinary course of its business as a commercial vendor in accordance with WV Code §3-8-9 at the usual and normal charge.

3.3.b. Examples of facilitating the making of contributions include but are not limited to:

3.3.b.1. Fundraising activities by corporations (except commercial vendors):

3.3.b.1.A. Officials or employees of the corporation ordering or directing subordinates or support staff (who therefore are not acting as volunteers) to plan, organize or carry out the fundraising project as a part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services;

3.3.b.1.B. Failure to reimburse a corporation within a commercially reasonable time for the use of corporate facilities in connection with such fundraising activities;

3.3.b.1.C. Using a corporate list of customers, clients, vendors or others who are not in the restricted group to solicit contributions or distribute invitations to the fundraiser, unless the corporation receives advance payment for the fair market value of the list;

3.3.b.1.D. Using meeting rooms that are not customarily made available to clubs, civic or community organizations or other groups; or

3.3.b.1.E. Providing catering or other food services operated or obtained by the corporation, unless the corporation receives advance payment for the fair market value of the services;

3.3.b.2. Providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes addressed to a candidate or political committee other than the corporation's separate segregated fund, or other similar items which would assist in transmitting or delivering contributions, but not including providing the address of the candidate or political committee;

3.3.b.3. Soliciting contributions earmarked for a candidate that are to be collected and forwarded by the corporation's separate segregated fund, except to the extent such contributions also are treated as contributions to and by the separate segregated fund; or

3.3.b.4. Using coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee.

3.3.c. Facilitating the making of contributions does not include the following activities if conducted by a separate segregated fund:

3.3.c.1. Any activity specifically permitted under WV Code §3-8-9, including soliciting contributions to a political committee, and making in kind contributions to a political committee; and

3.3.c.2. Collecting and forwarding contributions earmarked to a candidate.

3.3.d. Facilitating the making of contributions also does not include the following activities if conducted by a corporation:

3.3.d.1. Enrolling members of a corporation's restricted group in a payroll deduction plan or check-off system which deducts contributions from dividend or payroll checks to make contributions to the corporation's separate segregated fund, checkoff system or an employee participation plan, and are subject to the solicitation requirements of WV Code 3-8-8;

3.3.d.2. Soliciting contributions to be sent directly to candidates if the solicitation is directed to the restricted group; and

3.3.d.3. Soliciting contributions earmarked for a candidate that are to be collected and forwarded by the corporation's separate segregated fund, to the extent such contributions also are treated as contributions to and by the separate segregated fund.

3.3.e. Facilitating the making of contributions also does not include the provision of incidental services by a corporation to collect and forward contributions from its employee stockholders and executive and administrative personnel to the separate segregated fund of a trade association of which the corporation is a member, including collection through a payroll deduction or check-off system.

3.3.f. Any use of corporate property as described in Section 4.3.a. is conditioned on such corporation also permitting any group of employees represented by a corporate political action committee registered with either the Secretary of State of West Virginia or the Federal Election Commission, to use, without reimbursement, the real property of such corporation solely to establish, administer and solicit contributions to such corporate political action committee. No such group of employees may use any such real property in such a manner as to significantly disrupt the normal operations or activities of the corporation.

3.3.f.1. A corporation is prohibited from soliciting any contributions by use or threat of any physical force, job discrimination, financial reprisals or as a condition of employment, or by paying any contributor for his or her contribution through a bonus, expense account or other form of direct or indirect compensation.

3.3.f.2. Any person soliciting for a contribution to a Corporate Political Action Committee must, at the time of the solicitation, inform the person or member being solicited of the political purposes of such Corporate Political Action Committee.

3.3.f.3. Any person soliciting for a contribution to a Corporate Political Action Committee must at the time of the solicitation inform the person or member being solicited of the right to refuse to so contribute without any reprisal.

3.3.f.4. A guideline for contributions may be suggested, and not enforced by any direct or indirect means: Provided, That the person soliciting, or the solicitation, informs the person being solicited:

3.3.f.4.A. That the guidelines are merely suggestions; and

3.3.f.4.B. That a person is free to contribute more or less than the guidelines suggest and that the corporation will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.

3.3.f.5. Any written solicitation for a contribution to a Corporate Political Action Committee must contain statements which comply with the requirements of Paragraphs (2) and (3) of this subsection, and if a guideline is suggested, statements which comply with the requirements of Paragraph (4) of this subsection.

3.3.f.6. Subject to the above regulations, a corporation may, in making solicitations aimed solely at its restricted group for contributions to its Corporate Political Action Committee, utilize a payroll deduction plan, checkoff system or other plan which deducts contributions from dividend or payroll checks of its restricted group.

3.3.f.7. Accidental or inadvertent solicitation by a corporation, of persons beyond those whom it is permitted to solicit, will not be deemed a violation: Provided, that such corporation has used its best efforts to comply with the limitations regarding the persons it may solicit and that the method of solicitation is corrected forthwith after the discovery of such erroneous solicitation.

§146-1-4. Exceptions.

The provisions of Section 23 of this rule shall not be deemed to prohibit:

~~4.1. Loans by commercial lending institutions made in accordance with applicable banking or lending laws and regulations, in the ordinary course of business.~~

4.21. Expenditures made for public editorials or commentaries produced in the ordinary course of business by corporations whose primary purpose is journalism or public communications.

4.32. Direct communications by a corporation to its restricted group on any subject ~~defined by Section 6 of this rule~~, by any means not intended to reach the general public. Such communications by a corporation to its restricted group may be made by, but are not limited to, the following means:

~~(a)4.2.a.~~ The distribution of printed material by a corporation to its restricted group: Provided, That

~~(1)4.2.a.1.~~ The material is disseminated at the expense of the corporation; and

~~(2)4.2.a.2.~~ The material clearly states that it constitutes a communication of the views of the corporation.

~~(b)4.2.b.~~ The allowing of a candidate or party representative to address the restricted group of the corporation at any meeting, convention or other regularly scheduled function of the corporation which is primarily held for other purposes. The corporation shall pay no compensation whatsoever to such candidates. The candidate or party representative may address members of the restricted group in their individual rather than corporate capacities, and may at such time ask for individual contributions to his or her campaign or party, ask that such contributions to be sent to his or her campaign or party, or ask that contributions to a Corporate Political Action Committee (as defined in Section 62 of this rule) of the corporation be designation for his or her campaign or party.

~~(c)4.2.c.~~ The establishment and operation of phone banks by a corporation to communicate with its restricted group urging them to register and/or vote for a particular candidate or candidates.

~~(d)4.2.d.~~ The conducting of nonpartisan registration and get-out-the-vote drives, as by providing transportation to the polls, by a corporation aimed at its restricted group. If a registration drive is undertaken, assistance in registering or voting may not be withheld or refused on a partisan basis, and if transportation or other services are offered in connection with a registration or get-out-the-vote drive, such transportation or services may not be withheld or refused on a partisan basis.

4.43. The establishment, administration and solicitation of contributions to a Corporate Political Action Committee, by means and in amounts as herein specifically provided:

~~(a)4.3.a.~~ Establishment and administration of a Corporate Political Action Committee. -- A Corporate Political Action Committee or persons acting on its behalf may, subject to the authorization of such corporation, use the real or personal property, facilities and equipment of any corporation that participated in the establishment or participates in the administration or solicits contributions on behalf of such Corporate Political Action Committee. The cost of such use of property, real or personal, facilities or equipment need not be reimbursed to the corporation so long as such costs are incurred in setting up and running the Corporate Political Action Committee. Such costs that need not be reimbursed include the costs of office space, phones, utilities and supplies.

~~(b)~~ Any use of corporate property as described in Section 4.4 (a) immediately above is conditioned on such corporation also permitting any group of employees represented by a corporate political action committee registered with either the Secretary of State of West Virginia or the Federal Election Commission, to use, without reimbursement, the real property of such corporation solely to establish, administer and

~~solicit contributions to such corporate political action committee. No such group of employees may use any such real property in such a manner as to significantly disrupt the normal operations or activities of the corporation:~~

~~————— (1) A corporation is prohibited from soliciting any contributions by use or threat of any physical force, job discrimination, financial reprisals or as a condition of employment, or by paying any contributor for his or her contribution through a bonus, expense account or other form of direct or indirect compensation:~~

~~————— (2) Any person soliciting for a contribution to a Corporate Political Action Committee must, at the time of the solicitation, inform the person or member being solicited of the political purposes of such Corporate Political Action Committee.~~

~~————— (3) Any person soliciting for a contribution to a Corporate Political Action Committee must at the time of the solicitation inform the person or member being solicited of the right to refuse to so contribute without any reprisal:~~

~~————— (4) A guideline for contributions may be suggested, and not enforced by any direct or indirect means: Provided, That the person soliciting, or the solicitation, informs the person being solicited:~~

~~————— A) That the guidelines are merely suggestions; and~~

~~————— B) That a person is free to contribute more or less than the guidelines suggest and that the corporation will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.~~

~~————— (5) Any written solicitation for a contribution to a Corporate Political Action Committee must contain statements which comply with the requirements of Paragraphs (2) and (3) of this subsection, and if a guideline is suggested, statements which comply with the requirements of Paragraph (4) of this subsection:~~

~~————— (6) Subject to the above regulations, a~~

~~corporation may, in making solicitations aimed solely at its restricted group for contributions to its Corporate Political Action Committee, utilize a payroll deduction plan, checkoff system or other plan which deducts contributions from dividend or payroll checks of its restricted group:~~

~~————— (7) Accidental or inadvertent solicitation. -- Accidental or inadvertent solicitation by a corporation, of persons beyond those whom it is permitted to solicit, will not be deemed a violation: Provided, That such corporation has used its best efforts to comply with the limitations regarding the persons it may solicit and that the method of solicitation is corrected forthwith after the discovery of such erroneous solicitation.~~

4.54. Use of corporate facilities by other persons.

(a)4.4.a. A corporation may, at its discretion, allow use of its real or personal property, facilities or equipment beyond such uses as described in Section ~~1-44.3~~ above, in connection with any political activity by any person. However, the cost of any such use of corporate property, real or personal, facilities or equipment under this rule must be reimbursed to the corporation within a commercially reasonable time, at normal and usual commercial rental rates; except that:

(b)4.4.b. Stockholders (as defined in Section ~~52~~ of this rule) of the corporation and any employees of the corporation making use of corporate real or personal property, facilities and equipment under this Section ~~3-44.3~~ of this rule must reimburse all costs in excess of those that would arise from "Occasional, Isolated or Incidental" use. As to such occasional, isolated or incidental use, reimbursement will be required only to the extent that the overhead or operating costs of the corporation are increased. As used here, "Occasional, Isolated or Incidental Use" generally means:

(~~1~~)4.4.b.1. When use by corporate employees during working hours, an amount of activity during any particular work period which

does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or

~~(2)~~4.4.b.2. When used by corporate stockholders other than employees during the working period, such use does not interfere with the corporation in carrying out its normal activities; and/or

~~(3)~~4.4.b.3. Any such activity which does not exceed one (1) hour per week or four (4) hours per month, regardless of whether the activity is undertaken during or after normal working hours, shall be considered an occasional, isolated or incidental use.

§146-1-5. Powers And Duties Of Corporate Political Action Committees.

5.1. All Corporate Political Action Committees must file notice of their existence with the appropriate election officer, as defined in ~~section 2-8 above~~ WV Code §3-8-5b, prior to receiving or soliciting contributions.

5.1.~~+~~a. No such committee may be formed within twenty-eight (28) days of any election in which the committee will be active.

5.2. Solicitation and acceptance of contributions.

~~(a)~~5.2.a. A Corporate Political Action Committee may solicit contributions and volunteer personal services solely from the restricted group(s) of the corporation(s) which established such Corporate Political Action Committee.

~~(b)~~5.2.b. All solicitations by Corporate Political Action Committees shall conform in method and manner to the provisions of ~~Subsection 3.4 (c) above~~ WV Code 3-8-8.

~~(c)~~5.2.c. A Corporate Political Action Committee is specifically prohibited from receiving any direct or indirect payment, distribution, discount, loan, advance, deposit, gift of money or any services or anything of value from any person other than the corporation(s) which established such Corporate Political Action Committee or the

restricted group(s) of such establishing corporation.

~~(d)~~5.2.d. No Corporate Political Action Committee shall hold or sponsor any raffle, dance, banquet or similar fund-raising event directed to persons other than the restricted group(s).

5.3. Contributions and expenditure by Corporate Political Action Committee.

~~(a)~~5.3.a. No Corporate Political Action Committee shall directly or indirectly make any contribution in excess of the value of one thousand dollars (\$1,000) in connection with any campaign for nomination or election to or on behalf of any local or state office or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing or advocating the nomination or election of any candidate for any such office. For purposes of applying this one thousand dollar (\$1,000) limitation, all Corporate Political Action Committees established, maintained or controlled by the same corporation(s), including their respective parents, subsidiaries, branches, divisions, departments or local units, are aggregated into one (1) Political Action Committee. This one thousand dollar (\$1,000) limitation applies separately to contributions made in connection with the primary election for nomination of a candidate, and contributions made in connection with the election which determines the officeholder.

~~(b)~~5.3.b. Corporate Political Action Committees may make unlimited independent expenditures on public issues. -- Corporate Political Action Committees may make unlimited independent expenditures expressly advocating the election or defeat of any issue or a clearly identified candidate: Provided, That such expenditures are made without cooperation or consultation with, or at the suggestion of, any candidate or any authorized committee or agent of such candidate. If there is such cooperation or consultation or suggestion, an in-kind contribution results which then is subject to the contribution limits of Section ~~3-3 (a)~~ 3.5.a. immediately above.

5.4. Administration of Corporate Political Action Committees. -- Corporate Political Action Committees formed pursuant to these regulations may govern themselves, and control and expend funds, in any manner not in violation of law.

§146-1-6. Miscellaneous Provisions.

~~6.1. No public utility or railroad may establish or aid in the establishment of, or administer or aid in the administration of, or solicit or aid in the solicitation of contributions to, or expend any funds on behalf of, an identifiable political party, or identifiable candidate, for any local or state office. However, as to any Political Action Committee that confines its activities exclusively to expenditures and communications on public issues, such Political Action Committee and any public utility or railroad with which it is associated shall have all the duties, powers, rights and obligations of any other Political Action Committee and/or corporation under these regulations.~~

6.2~~1~~. Notwithstanding any provision of these regulations to the contrary, a corporation which customarily makes its meeting rooms available to clubs, civic or community organizations, or other groups may make such facilities available to a ~~candidate, or a political party committee or political committee~~, if the meeting rooms are made available on a nonpartisan basis and on the same terms given to other groups using the meeting rooms.

6.3~~2~~. All persons are prohibited from knowingly accepting or receiving any contribution, payment, distribution, loan, advance, deposit, gift of money or services or anything of value prohibited by these regulations.

6.4~~3~~. Nothing in these regulations limits in any manner the reporting obligations of corporations or Corporate Political Action Committees or any other person under W. Va. Code §3-8-5.

§146-1-7. Penalty Provision.

7.1. Any person violating this rule shall be guilty a misdemeanor, and, upon conviction thereof, shall be fined not more than ten thousand (\$10,000) dollars pursuant to W. Va. Code §3-8-8.