

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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JUN 30 4 23 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: STATE ELECTION COMMISSION TITLE NUMBER: 146

RULE TYPE: LEGISLATIVE; 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 NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 31, 1995 AT 8:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Secretary of State
Election Division
Bldg. 1, Room 157K
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Ken Hechler

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4160

STATEMENT OF CIRCUMSTANCES

146-1

This rule was required to be refiled by Senate Bill 573 that became effective in June 1995. This very small change only brings the regulations into compliance with state law in the area of forming political action committees prior to election.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Corporate Political Activity 146-1

Type of Rule: Legislative Interpretive Procedural

Agency Attention: Bill Harrington, State Election Commission

Address Secretary of State's office, Bldg. 1, Room 157K

Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ N/A	\$	\$	\$	\$
PERSONAL SERVICES	N/A				
CURRENT EXPENSE	N/A				
REPAIRS & ALTERATIONS	N/A				
EQUIPMENT	N/A				
OTHER	N/A				

2. Explanation of above estimates:

This rule has no fiscal impact.

3. Objectives of these rules:

Rule Title: _____

- 4. Explanation of Overall Economic Impact of Proposed Rule.
 - A. Economic Impact on State Government.

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

 - C. Economic Impact on Citizens/Public at Large.

Date: June 30, 1995

Signature of Agency Head or Authorized Representative

Ken Heckler

SUMMARY

146-1

This rule governs the establishment and activity of corporate political action committees.

TITLE 146
LEGISLATIVE RULES
ELECTION COMMISSION

FILED

JUN 30 4 23 PM '95

SERIES 1
CORPORATE POLITICAL ACTIVITY

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§146-1-1. General.

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

1.2. Authority. -- W. Va. Code §3-8-8

1.3. Filing Date. -- ~~February 5, 1980~~

1.4. Effective Date. -- ~~March 5, 1980~~

1.5. Repeal of former rule. -- These rules replace series 1, effective March 5, 1980.

§146-1-2. General Prohibition.

2.1. Except as permitted below by these regulations, no officer of any corporation (as defined by Section 6 herein), or agent or person (as defined by Section 6 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 expenditure 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.

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

§146-1-3. Exceptions.

The provisions of Section 2 of these rules shall not be deemed to prohibit:

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

3.2. Expenditures made for public editorials or commentaries

produced in the ordinary course of business by corporations whose primary purpose is journalism or public communications.

3.3. Direct communications by a corporation to its restricted group (as defined by Section 6 of these rules), 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) The distribution of printed material by a corporation to its restricted group: **Provided, That**

(1) The material is disseminated at the expense of the corporation; and

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

(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 Political Action Committee (as defined in Section 6 of these rules) of the corporation be designation for his or her campaign or party.

(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) 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.

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

(a) Establishment and administration of a Political Action Committee. -- A Political Action Committee or persons acting on its behalf may, subject to the authorization of such corporation,

use the property, real or personal, facilities and equipment of any corporation that participated in the establishment or participates in the administration or solicits contributions on behalf of such 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 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 3.4 (a) immediately above is conditioned on such corporation also permitting any group of employees represented by a political 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 political 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 Political Action Committee must, at the time of the solicitation, inform the person or member being solicited of the political purposes of such Political Action Committee.

(3) Any person soliciting for a contribution to a 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 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 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.

3.5. Use of corporate facilities by other persons.

(a) A corporation may, at its discretion, allow use of its property, real or personal, facilities or equipment beyond such uses as described in Section 3.4 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 Section 3.5 of these rules must be reimbursed to the corporation within a commercially reasonable time, at normal and usual commercial rental rates; except that:

(b) Stockholders (as defined in Section 5 of these rules) of the corporation and any employees of the corporation making use of corporate property, real or personal, facilities and equipment under this Section 3.5 of these rules 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) 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) 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) 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.

§146-1-4. Powers And Duties Of Political Action Committees Created By Corporations.

4.1. All Political Action Committees must file notice of their existence with the office of the Secretary of State appropriate election officer, as defined in section 6.8 below, within thirty (30) days of coming into being prior to the time which they began collecting monies.

4.1.1. No such committee may be formed within twenty-eight (28) days of any election in which the committee will be active. (see Section 5 of these rules).

4.2. Solicitation and acceptance of contributions.

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

(b) All solicitations by Political Action Committees shall conform in method and manner to the provisions of Subsection 3.4 (c) above.

(c) A 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 Political Action Committee or the restricted group(s) of such establishing corporation(s).

(d) No 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).

4.3. Contributions and expenditure by Political Action Committee.

(a) No 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 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) Political Action Committees may make unlimited independent expenditures on public issues. -- Political Action Committees may make unlimited independent expenditures expressly advocating the election or defeat of 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) immediately above.

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

§146-1-5. Miscellaneous Provisions.

5.1. No public utility company 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 company 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.

5.2. 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.

5.3. 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.

5.4. Nothing in these regulations limits in any manner the reporting obligations of corporations or Political Action Committees or any other person under West Virginia Code section five, article eight, chapter three.

§146-1-6. Definitions Of Terms As Used In These Regulations.

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

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

6.3. "Restricted Group" means stockholders and their families, and executive and administrative personnel 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.

6.4. "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.

6.5. "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) This definition includes:

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

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

(b) This definition does not include:

(1) Professionals who are represented by a labor organization;

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

(3) Former or retired personnel who are not stockholders;
or

(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) 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) 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.

6.6. "Families" means spouses and unemancipated children.

6.7. "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.

6.8. "Election Officer" means the officer or official who receives the pre-candidacy filing made by individuals running for public office, and includes the Secretary of State, the circuit clerk, the county clerk, and the municipal clerk or recorder, as set forth in West Virginia Code §3-1B-1 et seq.