

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #6

Do Not Mark In this Box

**FILED**

MAY 24 2 11 PM '96

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: STATE ELECTION COMMISSION TITLE NUMBER: 146

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: \_\_\_\_\_

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 162

SECTION §64-9-4, PASSED ON MARCH 25, 1996

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: JUNE 7, 1996

  
\_\_\_\_\_



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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Building 1, Suite 157-K  
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(Plus all the volunteer  
help we can get)

March 12, 1996

Bill Harrington  
Election Commission  
Secretary of State  
Bldg 1 Rm 157K  
Charleston, WV 25305

**SB 162** authorizing, **Title 146, Series 01, Corporate Political Activity**, passed the Legislature on **March 9, 1996**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **SB 162** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 162 Section 64-9-4(d)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

**\*\*\*IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,  
Administrative Law Division

TITLE 146  
LEGISLATIVE RULES  
ELECTION COMMISSION

SERIES 1  
CORPORATE POLITICAL ACTIVITY

§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. -- May 24, 1996

1.4. Effective Date. -- June 7, 1996

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

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

2.2. "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 county clerk, and the municipal clerk or recorder, as set forth in West Virginia Code §3-1B-1 et seq.

2.3. "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.

2.3.1. This definition includes:

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

b. Individuals following the recognized professions, such as lawyers and engineers.

2.3.2. This definition does not include:

a. Professionals who are represented by a labor organization;

b. Salaried foremen and other salaried lower-level supervisors having direct supervision over hourly employees;

c. Former or retired personnel who are not stockholders;  
or

d. 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.

2.3.3. 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.

2.3.4. 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.

2.4. "Families" means spouses and unemancipated children.

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

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.

2.7. "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.

2.8. "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, 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.

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.

#### §146-1-4. Exceptions.

The provisions of Section 2 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.

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

4.3. 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:

4.3.1. The distribution of printed material by a corporation to its restricted group: Provided, That

a. The material is disseminated at the expense of the corporation; and

b. The material clearly states that it constitutes a communication of the views of the corporation.

4.3.2. 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 this rule ) of the corporation be designation for his or her campaign or party.

4.3.3. 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.

4.3.4. 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.

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

4.4.1. 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 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 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.

4.4.2. Any use of corporate property as described in Section 4.4.1 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.

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

g. 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.

#### 4.5. Use of corporate facilities by other persons.

4.5.1. A corporation may, at its discretion, allow use of its real or personal property, 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 rule must be reimbursed to the corporation within a commercially reasonable time, at normal and usual commercial rental rates; except that:

4.5.2. Stockholders (as defined in Section 5 of this rule of the corporation and any employees of the corporation making use of corporate real or personal property, facilities and equipment