

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

RT
10
WV

COCHAIRMAN
ROBERT M. STEPTOE
STATE SENATE
126 EAST BURKE STREET
MARTINSBURG 25401



STAFF
LEGISLATIVE SERVICES
E-132 STATE CAPITOL
CHARLESTON 25305
PHONE (304) 346-2040

WILLIAM E. SHINGLETON
HOUSE OF DELEGATES
BOX 1548
FAIRMONT 26554

February 5, 1980

Hon. A. James Manchin
Secretary of State
W-151 State Capitol
Charleston, West Virginia 25305

Dear Mr. Manchin:

This is notification of approval of rules and regulations in accordance with Section 11, Article 3, Chapter 29A of the West Virginia Code.

On February 5, 1980, the Legislative Rule-Making Review Committee approved the following regulations:

- (a) State Treasurer - Procedure for Deposit of Funds in the Treasurer's Office by State Agencies; and
- (b) State Elections Commission - Corporate Political Action Committees.

A copy of the approved regulations is enclosed.

Very truly yours,

Robert M. Steptoe

Robert M. Steptoe

William E. Shingleton

William E. Shingleton

Enclosures

05:48 501

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 2-5-80

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

ELECTION COMMISSION

INDEX

SERIES I

CORPORATE POLITICAL ACTIVITY

T, file 146

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~
ELECTION COMMISSION

Legislative rules

~~Chapter 3, Article 8, Section 8~~
~~Series F (1980)~~

RE-FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 12-15-82

Subject: Corporate Political Activity

Section 1. General

1.01. Scope- These regulations establish general rules on Corporate Political Activity.

1.02. Authority- These regulations are issued under authority of West Virginia Code, Chapter 3, Article 8, Section 8.

1.03. Filing Date- These regulations were filed on February 5, 1980, in the Secretary of State's Office.

1.04. Effective Date- These regulations become effective on the Fifth day of March, 1980.

Section 2. General Prohibition

2.01 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, or in connection with any primary election or political convention or caucus held to select candidates for any local or State office.

[Handwritten signature/initials]

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

Section 3. Exceptions. The Provisions of Section (2) above shall not be deemed to prohibit.

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

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

3.03. Direct communications by a Corporation to its Restricted Group (as defined by section (6) herein), 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:

(1) That the material is disseminated at the expense of the Corporation; and

(2) That 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 be sent to his or her campaign or party, or ask that contributions to a Political Action Committee (as defined by section (6) herein) of the Corporation be designated 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.

3.04. 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 cost of office space, phones, utilities, and supplies.

(b) Any use of Corporate property as described in (3.04) (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 significantly to disrupt the normal operations or activities of the Corporation.

(c) Solicitation of Contributions by a Corporation to a Political Action Committee. A Corporation, or any Corporate officer, agent, or any Person acting on behalf of a Corporation may at any time make solicitations aimed solely at its Restricted Group for contributions to a Political Action Committee established and administered by such Corporation, by means as herein provided:

(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 ~~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:

(i) That the guidelines are merely suggestions; and

(ii) 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 the dividend or payroll checks of its Restricted Group.

(7) Accidental or inadvertant 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.

3.05 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.(3.04) 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 3.05, must be reimbursed to the Corporation within a commercially reasonable time, at normal and usual commercial rental rates; except that:

(b) Stockholders (as defined by Section (5) herein) of the Corporation and any employees of the Corporation making use of Corporate property, real or personal, facilities, and equipment under this section 3.05 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 hour per week or four 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.

Section 4. Powers and Duties of Political Action Committees Created by Corporations.

4.01. All Political Action Committees must file notice of their existence with the Office of the Secretary of State within 30 days of coming into being (see section (5) herein).

4.02. 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 3.04 (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).

4.03. 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 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 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 Political Action Committee. This one thousand dollar 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 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 3.03 (a) immediately above.

4.04. 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.

Section 5 Miscellaneous Provisions

5.01. 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, any Political Action Committee which makes any contribution to, or expends 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.

5.02 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.

5.03. 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.

5.04. Nothing in these Regulations limits in any manner the reporting obligations of Corporations or Political Action Committees or any other Person under W.Va. Code, Chapter 3-8-5.

Section 6. Definitions of Terms As Used In These Regulations

6.01. Corporation- any entity legally incorporated, ^W whether under the laws of West Virginia or any other State or any foreign country.

6.02. Person- means an individual, partnership, committee, association, corporation, and any other organization or group of persons.

6.03. 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 ^C 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.

6.04. 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.

6.05. 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.

6.06. Families- means spouses and emancipated children.

6.07. 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 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.

6.08. A Public Utility Company- means any corporation which is a public utility as defined in the West Virginia Code Chapter 24, Article 1, Section 1, which is regulated by the West Virginia Public Service Commission or a comparable regulatory body of another state. This definition shall include railroad companies.