

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

FILED

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 §§3-1A-5 & 6, 3-1B-3

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Fair Campaign Practices

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.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4.00

STATEMENT OF CIRCUMSTANCES

146-2

Senate Bill 573 authorized the State Election Commission to promulgate regulations defining how they were going to implement the Code of Fair Campaign Practices. This rule explains how candidates subscribe to the Code and details how complaints are to be handled.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Code of Fair Campaign Practices 146-2

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	HEREAFTER
<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 Hepler

SUMMARY

146-2

This rule implements the Code of Fair Campaign Practices that was codified in the 1995 Legislative Session.

TITLE 146
LEGISLATIVE RULES
ELECTION COMMISSION

FILED

JUN 30 4 23 PM '95

SERIES 2
FAIR CAMPAIGN PRACTICES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§146-2-1. General.

1.1. Scope: -- These rules establish the implementation of state law on the voluntary adherence to the "Fair Campaign Practices of 1995." See West Virginia Code §3-1B-1, et. seq.

1.2. Authority. -- West Virginia Code §3-1A-5 and 6, and §3-1B-3

1.3. Filing Date. --

1.4. Effective Date. --

§146-2-2. Definitions.

2.1. "Campaign advertising or communication" means:

2.1.1. a communication, whether written or oral, authorized by a candidate or a candidate's committee; and,

2.1.2. for the express purpose of publicly advocating the nomination, election or defeat of a candidate;

2.2. "Candidate for public office" means an individual:

2.2.1. who has filed a pre-candidacy statement, pursuant to West Virginia Code §3-8-5e; or

2.2.2. who has qualified to have his or her name listed on the ballot of any election; or

2.2.3. who has declared his or her intention to seek nomination or election through a petition or write-in procedure for any state, regional, county, municipal or district office which is to be filled at an election;

2.3. "Code" means the code of fair campaign practices, the entire body being set forth in West Virginia Code §3-1B-5 (see Form _____);

2.4. "Commission" means the state election commission created pursuant to the applicable provisions of West Virginia Code §3-1A-1 et. seq.

2.5. "Political committee" means any and all of those person or persons, organizations or entities required by West Virginia Code §3-8-5 to keep accounts and file financial statements;

2.6. "Advisory opinion" means a written opinion issued by the commission in response to a written request for such an opinion on the issue of whether or not an action, or proposed action, of a subscribing candidate violates the code of fair campaign practices;

2.7. "Subscribing candidate" means a candidate for public office who has voluntarily agreed to subscribe to, adhere to and endorse the code of fair campaign practices;

2.8. "Automatic release" means a release by operation of law, pursuant to the applicable provisions of West Virginia Code §3-1B-9, from the campaign spending limitations when a subscribing candidate's opponent exceeds such campaign spending limitations.

2.9. "Election officer" means the officer or official who receives the pre-candidacy filings 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 for in West Virginia Code §3-1B-1 et seq.

§146-2-3. Code of Fair Campaign Practices.

3.1. Prescribed forms of code.

3.1.1. It is the duty of the secretary of state, in consultation with the commission, to prescribe the forms to be used and to furnish the prescribed forms to the appropriate election officers receiving the candidate's filings in sufficient time and quantities, as may be requested by the election officers;

3.1.2. The prescribed forms are required to contain the full and complete text that is statutorily mandated by West Virginia Code §3-1B-5, except that the commission may increase the spending limitations established in the text at its discretion by properly promulgated legislative rule(s).

3.2. Notice and an opportunity to subscribe to the Code is required when

3.2.1. an individual files his or her pre-candidacy statement, certificate of announcement, nominating petition and other paper evidencing his or her intention to be candidate for public office; or

3.2.2. an individual files the statement of organization of a political committee.

3.3 At the time an election officer receives a filing, as outlined in _____-_____-3.2 above, the election officer is required

3.2.1. to furnish the individual with the prescribed form containing the text of the code of fair campaign practices;

3.2.2. to advise the candidate of his or her opportunity voluntarily to subscribe to, adhere to and endorse the code;

3.2.3. to inform the candidate whether or not his or her opponent(s) have voluntarily subscribed;

3.2.4. to advise the candidate of the voluntary nature of his or her subscription to, adherence to and endorsement of the code; and,

3.2.5. to inform the candidate that in no event will any person be required to so subscribe to, adhere to and endorse the code.

3.4. Forms of public information

3.4.1. The election officer receiving the filing is required to accept the candidate's completed forms at any and all times prior to the election;

3.4.2. Any election officer mistakenly receiving a completed form from a candidate (i.e. one which should have been filed with a different election officer) is required to forward the completed form immediately to the appropriate election officer, with a record of such kept until one hundred eighty (180) days after the election to which they pertain.

§146-2-4. Advisory Opinions.

4.1. The commission may, at its discretion, issue advisory opinions in response to written requests for such on the issue of whether or not an action, or proposed action, of a subscribing candidate violates the code;

4.2. The opinion is required to be in writing, citing the particular part or portion of the code, or any other authority, being relied upon by the commission;

4.3. All advisory opinions issued are required to be published and indexed in the code of state rules by the secretary of state.

§146-2-5. Complaint and Hearing Procedures. (See West Virginia Code §3-1B-4 for the statutory due process requirements).

The complaint will be in writing on the forms prescribed by

the commission. The form will include, at least, the following sworn and notarized information:

5.1.1. The name, address and telephone number of the complainant; and

5.1.2. The name, address and telephone number of the subscribing candidate; and

5.1.3. A number employed for designation and proper processing purposes; and

5.1.4. A narrative section, which will include the complainant's allegations of violation(s) by the subscribing candidate, with as much particularly as possible requested on the face of the form; and,

5.1.5. The signature of the complainant, with a proper verification as is used in other civil cases, wherein the complainant affirms that he or she believes the allegations complained of are true and correct; and

5.1.6. Within five (5) days of receiving the written complaint, the commission will forward a copy of the complaint to the subscribing candidate, requesting a written response or answer to the alleged violations of the code; and,

5.1.7. Within ten (10) days of his or her receipt of the complaint, the subscribing candidate will file his or her response or answer; and

5.1.8. The response or answer of the subscribing candidate:

(a) will be made in writing, with the proper complaint number on the face of the response or answer; and

(b) should address each allegation made by the complainant; and

(c) will have the signature of the subscribing candidate, with a proper acknowledgement, as is used in other civil cases; and

5.1.9. Within ten (10) days of its receipt of the response or answer, the commission will determine by a majority vote whether or not there is a reasonable likelihood that the candidate has violated the code.

5.1.10. If the subscribing candidate is determined not to have a reasonable likelihood of having violated the code, the candidate will be so advised in writing.

5.1.11. If the subscribing candidate is determined to have a reasonable likelihood of having violated the code, the candidate will be so informed in writing, together with a proper notice of his or her right to request a hearing before the commission within ten (10) days of the receipt of the determination and notice.

5.1.12. Should the subscribing candidate request a hearing before the commission, it will:

(a) be scheduled within ten (10) days after such request with written notice of such served upon both the complainant and the candidate; and

(b) be continued only for good cause shown.

5.1.13. At and during the hearing on the merits of the complaint, the commission:

(a) will conduct a hearing in a fair and impartial manner to both the complainant, and his or her witnesses, and the subscribing candidate, and his or her witnesses; and,

(b) need not strictly apply the Rules of Evidence, except for the rule of relevance, and may allow credible hearsay evidence to be admitted; and,

(c) will apply the test of "clear and convincing" evidence as the adjudicatory standard from which alleged violations of the code will be determined from all the evidence adduced in the proceeding.

5.1.14. Following the commission's review and deliberations over all of the evidence adduced and the entire record before it, the commission:

(a) may issue a public opinion stating that the subscribing candidate has committed a violation of the code, should the commission determine by majority vote that there was clear and convincing evidence supporting the alleged violation(s), or should the subscribing candidate decline to request such a hearing; or

(b) will issue a public statement that the subscribing candidate has not violated the code, should the commission determine by a majority vote that there was not clear and convincing evidence supporting the alleged violation(s). This public statement will be issued on the same day on which the hearing takes place, as required by West Virginia Code §3-1B-4.