

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

Form #4

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DEC 22 1 11 PM '95

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: STATE ELECTION TITLE NUMBER: 146

CITE AUTHORITY W.VA. CODE §§ 3-1A-5 AND 6, 3-1B-3

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: FAIR CAMPAIGN PRACTICES

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE, 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.

*Ken Hechler*

3-40

TITLE 146  
LEGISLATIVE RULES  
ELECTION COMMISSION

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DEC 22 1 11 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 for any state, regional, county, municipal or district office which is to be filled at an election through a petition or write-in procedure.

2.3. "Code" means the Code of Fair Campaign Practices, ~~the entire body being~~ set forth in West Virginia Code §3-1B-5.

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; a committee organized by one or more individuals, corporations, associations, labor unions or organizations, for the purpose of advocating or opposing the nomination or election of one or more candidates or the passage or defeat of one or more ballot issues.

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 a 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 §146-2-3.2 above, the election officer is required

3.3.1. to furnish the individual with the prescribed form containing the text of the Code of Fair Campaign Practices;

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

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

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

3.3.5. 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~~

5.1.4-3. 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,

5.1.5-4. 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

5.1.6-5. 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,

5.1.7-6. Within ten (10) days of his or her receipt of the complaint, the subscribing candidate will file his or her ~~response or~~ answer; and

5.1.8-7. 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~~ along with a statement swearing or affirming that the information contained in the answer is true and correct to the best of the candidate's knowledge.

5.1.9-8. 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.

5.1.10-9. 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.

5.1.11-10. 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.

5.1.12-11. 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.

5.1.13-12. 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, however, the evidence must be reasonably related to the issues in the complaint except for the rule of relevance, and may allow credible hearsay evidence to be admitted; and,

(c) will in it's discretion admit credible hearsay evidence; 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.~~

(d) will make it's decision based on the greater weight of evidence presented at the hearing;

(e) will have a quorum present at the hearing and the decision must be agreed upon by a majority of those present.

5.1.14-13. Following the commission's review and deliberations over all of the evidence introduced 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.



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Nov 27 2 13 PM '95

West Virginia Legislature  
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Room MB47-State Capitol  
Charleston, West Virginia 25305  
(304) 347-4840

Senator Mike Ross, Co-Chair  
Delegate Vickie Douglas, Co-Chair

Debra A. Graham, Counsel  
Joe Altizer, Associate Counsel  
Marie Nickerson, Admr. Assistant

November 15, 1995

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register  
TO: The Honorable Ken Hechler  
Secretary of State  
State Capitol  
Charleston, WV 25305  
FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Fair Campaign Practices

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed
  - (b) as modified by the agency   X
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Bill Harrington  
Chief of Staff

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