

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: 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 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

Ken Hechler



KEN HECHLER
Secretary of State

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Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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Charleston, WV 25305-0770

(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 02, Fair Campaign Practices** 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(c)**. 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 2
FAIR CAMPAIGN PRACTICES

§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. -- May 24, 1996

1.4. Effective Date. -- June 7, 1996

§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, 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 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.

§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 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

3.2.1. 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.

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 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,

5.1.4. 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

5.1.5. 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,

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

5.1.7. The answer of the subscribing candidate:

a. will be made in writing, with the proper complaint number on the face of the answer; and

b. should address each allegation made by the complainant; and

c. will have the signature of the subscribing candidate, 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.

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

5.1.9. 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.

5.1.10. 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.

5.1.11. 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.

5.1.12. 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 credible hearsay evidence to be admitted; and,

c. will in it's discretion admit credible hearsay evidence; and

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.

5.1.13. 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.

1 SENATE BILL NO. 224

2 (By Senators Ross, Anderson, Boley,
3 Buckalew, Grubb and Macnaughtan)

4 [Introduced January 29, 1996; referred
5 to the Committee on

6 the Judiciary

7 146-2

8
9
10 A BILL to amend article nine, chapter sixty-four of the
11 code of West Virginia, one thousand nine hundred
12 thirty-one, as amended, by adding thereto a new
13 section, designated section nine, relating to
14 authorizing the state election commission to
15 promulgate legislative rules relating to the fair
16 campaign practices.

17 Be it enacted by the Legislature of West Virginia:

18 That article nine, chapter sixty-four of the code of
19 West Virginia, one thousand nine hundred thirty-one, as
20 amended, be amended by adding thereto a new section,
21 designated section nine, to read as follows:

22 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS BOARDS AND
23 AGENCIES TO PROMULGATE LEGISLATIVE RULES.

24 §64-9-9. State election commission.

1 The legislative rules filed in the state register on
2 the thirty-first day of July, one thousand nine hundred
3 ninety-five, under the authority of section five, article
4 one-a, chapter three, of this code, modified by the "state
5 election commission to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the twenty-second day of December, one
8 thousand nine hundred ninety-five, relating to the state
9 election commission (fair campaign practices, 146 CSR 2),
10 are authorized.

11

12 NOTE: The purpose of this bill is to authorize the
13 State Election Commission to promulgate legislative rules
14 relating to fair campaign practices.

15

16 This section is new; therefore, strike-throughs and
17 underscoring have been omitted.

662b

H. B. 4294

(By Delegates Douglas, Gallagher, Faircloth, Compton,
Linch and Riggs)

(Introduced January 29, 1996; referred to the
Committee on the Judiciary.)

146-2

A BILL to amend article nine, chapter sixty-four of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new
section, designated section nine, relating to
authorizing the state election commission to
promulgate legislative rules relating to the fair
campaign practices.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter sixty-four of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, be amended by adding thereto a new section,
designated section nine, to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS BOARDS AND
AGENCIES TO PROMULGATE LEGISLATIVE RULES.

§64-9-9. State election commission.

4294

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2 the thirty-first day of July, one thousand nine hundred
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(Plus all the volunteer help we can get)

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Oct 8 3 56 PM '96

FILED

TO: JAN CASTO

AGENCY: ELECTIONS

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: August 27, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 2 TITLE: 146 ELECTIONS

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: William H. Harrington

TITLE OF PERSON SIGNING: Chief of Staff

DATE: Oct 8, 1996

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.