

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

Form #3

RECEIVED  
99 AUG 10 AM 9:51  
OFFICE OF THE SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: State Election Commission TITLE NUMBER: 146

CITE AUTHORITY West Virginia Code

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Regulation of Campaign Finance

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

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Ken Hechler

## **SUMMARY**

### **TITLE 146, SERIES 3**

This legislative rule clarifies and provides for implementation of state law relating to campaign finance, reporting requirements and prohibited activities as specified in West Virginia Code §3-8-1 et seq.

## **COMMENT**

The Campaign Financial Statements F-7 and F-7A were attached to the proposed rule for informational purposes only. The reports are not part of the proposed rule.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Regulation of Campaign Finance

Type of Rule:  Legislative  Interpretive  Procedural

Agency Secretary of State

Address 1900 Kanawha Blvd., E.  
Charleston, WV 25305-0770

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	\$ n/a	\$ n/a	\$ n/a	\$ n/a	\$ n/a
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

None of the above is applicable to this rule.

3. Objectives of these rules:

To clarify and provide for implementation of state law relating to campaign finance, reporting requirements and prohibited activities as specified in West Virginia Code §3-8-1 et seq.

Rule Title: Regulation of Campaign Finance

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

none

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

none

C. Economic Impact on Citizens/Public at Large.

none

Date: July 6, 1999

Signature of Agency Head or Authorized Representative

Jan Cato

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: 8/6/99

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Election Commission

1900 Kanawaha Blvd. E

Charleston, WV 25301 (304) 558-6000

LEGISLATIVE RULE TITLE: Regulation of Campaign Finance

1. Authorizing statute(s) citation W.Va. Code §3-1A-5, §3-1A-6

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 6, 1999

b. What other notice, including advertising, did you give of the hearing?

none

c. Date of Public Hearing(s) *or* Public Comment Period ended:

Aug. 5, 1999

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received \_\_\_\_\_

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

n/a

f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Jan Casto, Deputy Secretary of State

1900 Kanawha Blvd. E, Charleston, WV 25301

(304) 558-6000; fax: (304) 558-0900

E-mail: jcasto@secretary.state.wv.us

g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

n/a

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing or comment period:

n/a

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached

TITLE 146  
LEGISLATIVE RULES  
ELECTION COMMISSION

SERIES 3  
REGULATION OF CAMPAIGN FINANCE

FILED  
AUG 6 9 49 AM '99  
OFFICE OF THE CLERK OF THE VIRGINIA  
SECRETARIAT OF STATE

**§146-3-1. General.**

1.1. Scope. -- These rules clarify and provide for implementation of state law relating to the regulation of campaign finance, reporting requirements and prohibited activities. See West Virginia Code §3-8-1 et seq.

1.2. Authority. -- W. Va. Code §3-1A-5, §3-1A-6

1.3. Filing Date. -- ~~May 24, 1996~~

1.4. Effective Date. -- ~~June 7, 1996~~

**§146-3-2. Definitions.**

This section defines terms used in article eight, chapter three of the West Virginia Code and terms used in this rule which are not otherwise defined in chapter three.

2.1. "Ballot issue" means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter adoption or revision, an increase or decrease of corporate limits, or any other question placed before the voters under the provisions of the West Virginia Code.

2.2. "Ballot issue committee" means a political committee established solely for the purpose of advocating or opposing a ballot issue and which makes no expenditures to or on behalf of a candidate, political party or other political committee.

2.3. "Business affiliation" means the name of an individual's employer, or the name of the firm, business or organization, if any, with which a self-employed individual is primarily affiliated.

2.4. "Candidate" means an individual who:

2.4.1. has filed a certificate of announcement §3-5-7 or a municipal charter;

2.4.2. has filed declaration of candidacy under §3-5-23;

2.4.3. has been named to fill a vacancy on a ballot; or

2.4.4. has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election to a state, district, county or municipal office or party office to be filled at any primary, general or special election.

2.5. "Candidate's committee" means a political committee established with the approval of or in cooperation with one pre-candidate or candidate to explore the possibilities of seeking a particular office and/or to advocate his or her nomination or election to an office in one election cycle. If a candidate directs or influences the activities of more than one committee, those committees shall be considered one committee for the purpose of contribution limits.

2.6. "Contribution" ~~means~~ includes a gift subscription, assessment, ~~payment for services,~~ dues, advance donation, ~~pledge,~~ contract, agreement, ~~forbearance or promise of money or other tangible thing of value, whether or not conditional or legally enforceable,~~ or a transfer of money or other tangible thing of value to a person, made for political purposes, as defined herein. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected before it is received or returned within thirty (30) days and not used during that time for political purposes. A contribution does not include volunteer personal services provided without compensation.

2.7. "Election" means any primary, general or special election conducted under the provisions of this code or under the charter of any municipality.

2.8. "Financial agent" is, for the purposes of this rule, an individual designated to act on behalf of one candidate to conduct financial transactions for political purposes on behalf of that candidate.

2.9. "Grossly incomplete or grossly inaccurate" means that a financial statement as defined under Article 8, Chapter 3, Section 5 of the West Virginia Code is missing information required by Article 8, Chapter 3 of the Code and Title 146 of the West Virginia Code of State Rules.

2.10. "Inaugural committee" includes any person, organization or group of persons soliciting or receiving contributions for the purpose of funding an inaugural event for an elected state official.

2.11. "Inaugural event" means any event or events held between the date of the general election for a state public office and a date ninety days after the date of the general election, whether the event is sponsored by the inaugural committee or the state political party committee representing the party of the elected official and for which the elected official is a prominent participant or for which solicitations of contributions include the name

of the elected official in prominent display.

2.12. "Nominal noncash expressions of appreciation" shall mean a token of appreciation, having a cash value of three dollars (\$3.00) or less, given to volunteer or paid campaign workers following the close of the polls or within 30 days thereafter.

2.13. "Occupation" means the principal work activity which is described by a general term such as teacher, miner, business executive, homemaker or doctor.

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

2.15. "Political committee" means an association of persons, an organization of any kind, or any two (2) or more persons acting together, wholly or in part, to receive or expend money or other thing of value for political purposes:

This definition shall include but not be limited to political party executive committees, other committees operating in conjunction with a political party or using a political party name, political action committees and any other organizations, whether temporarily or permanently established, using any portion of their funds for political purposes.

This definition shall not include family members or members of a partnership acting together to make joint or individual contributions to a candidate or political committee.

2.16. "Political purposes" means advocating or opposing the nomination, election or defeat of one or more candidates, supporting the administration or activities of an established political party or an organization which has declared itself a political party, supporting the administration or activities of a political committee, advocating or opposing the passage or defeat of a ballot issue, determining the advisability of becoming a candidate under the pre-candidacy financing provisions, and supporting the retirement of the debt of a candidate or political committee incurred for any of the above purposes.

2.17. "Pre-candidate" means, for the purpose of this rule, an individual who has filed a pre-candidacy statement under the provisions of §3-8-5e but has not yet filed a certificate of announcement or declaration of candidacy. This definition does not exclude a pre-candidate from the requirements and prohibitions relating to candidates in West Virginia Code.

2.18. "Solicit" or "solicitation" means the act of asking, suggesting, requiring or inviting, either orally or in writing, a person or persons, organization of any kind, political committee or other entity to give a contribution or other thing of value for political purposes, as defined in this section.

2.19. "Treasurer" means an individual designated to act on behalf of a political committee to conduct the financial transactions of the committee. For the purposes of this rule, the term "treasurer" shall be used in place of "financial agent" as defined in §3-8-4 when the individual acts on behalf of more than one candidate or person.

### **§146-3-3. Contributions for Primary and General Elections.**

This section establishes a means for distinguishing between primary and general election contributions, for the purpose of contribution limits established in §3-8-12(f).

3.1. A contribution to a pre-candidate or pre-candidate's committee is a contribution in connection with a primary election.

3.2. A contribution to a candidate or candidate's committee is a contribution in connection with a primary election in the following circumstances:

3.2.1. For a candidate for nomination or election in the primary or for nomination by petition, all contributions received on or before the primary election day;

3.2.2. For a candidate nominated in the primary election, a contribution received after the primary which is designated in writing on the financial report, with the consent of the contributor, as a contribution for the primary election, providing the aggregate of all such designated contributions do not exceed the total of unpaid bills, loans or other financial obligations incurred for the primary election;

3.2.3. For a candidate defeated for nomination in the primary election, all contributions received after the primary, not to exceed the total of unpaid primary election expenses;

3.2.4. For a candidate for nomination in a party convention, all contributions received on or before the day of that convention.

3.3. A contribution to a candidate or candidate's committee is a contribution in connection with a general or special election in the following circumstances:

3.3.1. For a candidate nominated in a primary election or party convention, all contributions, except those designated as primary contributions under 3.2.2, received after the nomination and not later than the date when all debts, loans or other financial obligations of the general election campaign have been repaid;

3.3.2. For a candidate appointed to fill a vacancy on the general or special election ballot by a party executive committee, all contributions received in connection with the election and not later than the date when all debts, loans or other financial obligations

of the general election campaign have been repaid.

3.4. A contribution to a political committee, other than a candidate's committee, acting for political purposes in both the primary and general election is a contribution:

3.4.1. In connection with a primary election if the contribution is received on or after the last Saturday in March of a non-election year and by the date of the primary election in the following calendar year (for example, from March ~~28~~ 27, ~~1987~~ 1999, to May ~~10~~ 8, ~~1988~~ 2000); and

3.4.2. In connection with a general election if the contribution is received after the date of a primary election and not later than the day before the last Saturday of March of the following calendar year (for example, from May ~~11~~, ~~1988~~ 10, 2000 to March 24, ~~1989~~ 2001).

3.5. A contribution to a political committee acting for political purposes only in one election is a contribution in connection with that election.

#### **§146-3-4. Contributions for Inaugural Events.**

This section clarifies the provisions of §3-8-2a which require the filings of statements for certain contributions to inaugural event committees.

4.1. An inaugural committee established for purpose of soliciting or receiving contributions for the funding of all or any part of an inaugural event for any person elected to any state public office must file a verified financial statement with the Secretary of State's Office relating to any contributions from one person in excess of two hundred fifty dollars (\$250.)

4.2. An inaugural committee shall file and retain detailed records of any contribution from one person in excess of two hundred fifty dollars (\$250.).

4.3. For purposes of this section, "detailed records" shall contain the following information:

4.3.1 The full name of each person, firm, association or committee; and,

4.3.2 The residence, mailing address and may include a business telephone number, if available; and,

4.3.3 In the case of an individual, the major business affiliation and occupation; and,

#### 4.3.4 The amount of contribution.

4.4. The inaugural committee, financial agent or any person or officer acting on behalf of such committee shall file a sworn and notarized financial statement, containing the above stated information for each person making a contribution in excess of two hundred fifty dollars (\$250.), within ~~forty-five (45)~~ ninety (90) days following the inaugural event.

4.5. The sworn and notarized financial statement shall be on a form prescribed by the State Election Commission.

4.6. Aggregate contributions of any person to any inaugural committee ~~are not limited and do not fall within the contribution limitations imposed for any candidate in connection with a primary or general election~~ shall not exceed \$5,000.

4.7. Excess campaign funds, as defined in section 7 below, may not be transferred to an inaugural committee.

#### **§146-3-5. Contribution Limitations and Sources.**

This section clarifies the application of the limitation on contributions established in §3-8-12(f) and §3-8-12(g), and the prohibition on corporate contributions in §3-8-8.

5.1. Limitations on contributions to candidates for national elective office (including President, Vice President, U.S. Senate and U.S. House of Representatives) are established in Chapter 14, Title 2 of the United States Code and the Code of Federal Regulations and are not subject to regulation by the states. The Federal Election Commission regulates federal campaign activity. (FEC, 999 E Street, N. W., Washington, D.C. 20463 Telephone (800)424-9530)

5.2. Aggregate contributions from one person to a candidate or political committee in connection with a primary election may not exceed one thousand dollars (\$1,000). Aggregate contributions from one person to a candidate or political committee in connection with a general or special election may not exceed one thousand dollars (\$1,000). Aggregate contributions from one person to a State political party executive committee may not exceed one thousand dollars (\$1,000.) in any calendar year. The term person is defined by West Virginia Code §3-8-4.

5.3. A contribution made by a business licensed as a sole proprietorship is a contribution made by the owner of that sole proprietorship. The aggregate contribution limits apply to all contributions to a candidate or political committee made by that owner, whether from personal or business funds.

5.4. A contribution made by a business licensed as a partnership is a contribution which shall be apportioned to the ownership interest of the partners. The aggregate contribution limits apply to contributions to a candidate or political committee made by each partner whether from personal funds or from the contributor's share of partnership funds.

5.5. A husband and wife may each contribute one thousand dollars (\$1,000) to the same candidate or political committee in connection with the same election, regardless of the source of family income.

5.6. A contribution made by check drawn on a joint personal account shall be attributed to the person who signed the check, or equally to the persons signing the check, unless otherwise specified in writing by the contributor.

5.7. Minor children (children under eighteen (18) years of age) may contribute up to one thousand dollars (\$1,000) to a candidate for an election if:

5.7.1. The decision to contribute is made knowingly and voluntarily by the minor child;

5.7.2. The funds, goods or services contributed are owned and controlled by the minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained in the child's name; and

5.7.3. The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed or is not in any other way controlled by another individual.

5.8. When a contributor designates all or part of a contribution for the benefit of a particular candidate and makes that contribution to a political committee acting with the approval or control of that candidate, the contribution shall be deemed to be an indirect contribution to the designated candidate and shall be subject to the aggregate contribution limits for that candidate.

5.9. A candidate or candidate's committee established for one primary and general election may transfer excess campaign assets to the same candidate's campaign or committee for a subsequent election year, and such a transfer shall not be limited by aggregate contribution limits.

5.10. The aggregate contribution by a person to a ballot issue committee is not limited; and corporate contributions to a ballot issue committee are not prohibited.

5.11. Transfers of contributions by a political committee established as a federal

committee under the regulation of the Federal Election Commission (FEC) from the committee's federal account to a state account shall not be made for the purpose of allowing any contributor to exceed the maximum contribution per election to the state account.

5.12. If a candidate or candidate's committee has excess campaign funds at the time of filing the post election financial report, no further contributions may be accepted until the candidate files a pre-candidacy statement for a subsequent election.

5.13. If a candidate or candidate's committee has debts, outstanding loans or unpaid bills at the time of filing the post election financial report, further contributions may be accepted only until an amount sufficient to repay such debts and outstanding loans has been received.

#### **§146-3-6. Lawful Expenditures.**

This section clarifies the meaning of certain permissible expenditures of money and other things of value for election expenses for purposes enumerated in West Virginia Code §3-8-9.

6.1. Funds belonging to or received by a candidate or political committee for political purposes may be used to employ persons to perform those functions enumerated in West Virginia Code §3-8-9, either on a full-time, part-time or temporary basis, providing the provisions of Title 146, Code of State Rules, Series 4, are complied with.

6.2. Funds belonging to or received by a candidate or political committee for political purposes may be used for reasonable office expenses enumerated in West Virginia Code §3-8-9.

6.3. "Necessary traveling and hotel expenses" shall include mileage at a rate not to exceed the current state-mandated reimbursement rate per mile or direct charges for transportation and itemized food and lodging costs incurred specifically for the purpose of campaigning or conducting the organizational, political or financial business of a political committee or candidate's campaign. The term shall not include the purchase cost of any vehicle, or expenditures for traveling and hotel expenses incurred for activities which result primarily in personal benefit and are not directly and specifically undertaken for political purposes.

6.4. No money or thing of value derived from contributions received by a candidate or political committee may be paid to or given to any person, except:

6.4.1. as lawful payment for goods provided, services rendered or reimbursement of expenses incurred for political purposes;

6.4.2. as food, entertainment or costs incidental to a fund-raising event or public meeting; or

6.4.3. as printed campaign promotional items of nominal value which clearly identify the candidate, or party; or

6.4.4. as a nominal noncash expression of appreciation to campaign workers as defined in section 2.12 above, following the close of the polls or within 30 days thereafter.

6.5. A candidate may be reimbursed from contributions received for lawful election expenses paid from the personal funds of the candidate, providing receipts are retained and those itemized expenditures are reported in a timely manner as required by law.

6.6. No candidate may receive any payment of money or other thing of value for personal use from funds solicited or received for political purposes on his or her behalf, except as reimbursement as provided in section 6.5.

~~6.7. Monies exceeding five dollars (\$5.00) in amount expended by any person for the printing, duplicating or distributing of a scorecard, voter guide, or other written analysis of a candidate's position or votes on specific issues within sixty (60) days of an election, or monies expended to distribute more than fifty (50) copies of such materials are an expense incurred for political purposes and shall be properly reported pursuant to West Virginia Code §3-8-1 et seq. The provisions of this subsection shall not apply to those exceptions as set forth in West Virginia Code §3-8-5(e)(2).~~

#### **§146-3-7. Disposing of Excess Campaign Assets, Terminating a Political Committee.**

This rule clarifies the methods of lawfully disposing of excess campaign assets, and the method for terminating a political committee pursuant to W. Va. Code §3-8-4a.

7.1. Excess campaign assets are those monies, materials, equipment or other things of value derived from contributions which are:

7.1.1. remaining in the possession of the pre-candidate or pre-candidate's committee at the conclusion of pre-candidacy when the pre-candidate decides not to become a candidate;

7.1.2. remaining in the possession of the candidate or candidate's committee after the candidate loses in the primary election or at the conclusion of the campaign after the candidate's general election and after debts, loans and other liabilities are repaid; or

7.1.3. belonging to a political committee which wishes to discontinue activity

and dissolve.

7.2. Excess campaign assets may be lawfully:

7.2.1. transferred from a candidate's committee organized for one election year to the same candidate's committee for a subsequent election year, providing that candidate has filed a pre-candidacy statement and a statement of organization of the new committee before the transfer is made;

7.2.2. distributed for a lawful election expense enumerated in West Virginia Code §3-8-9 by making a contribution to one or more political party committees, other political committees or candidates; or

7.2.3. returned on a pro-rata basis to each contributor.

7.2.4. subject to Internal Revenue Service regulations relating to personal income, used by the candidate to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of public office;

7.2.5. contributed to any charitable organization; or

7.2.6. transferred, ~~without limitation,~~ to any national, state or local committee of any political party.

7.3. No person may receive or utilize excess campaign assets for personal economic benefit or use.

7.3.1. Subject to section 7.2.4 above, supplies or equipment purchased by an office holder and used to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of public office shall become the property of the state, or the district, county, or municipality in which the office is held.

7.4. No candidate, financial agent or treasurer may distribute excess campaign assets through personal gifts, promotional items or other expenditures not authorized by West Virginia Code §3-8-9.

7.5. A political committee which is solvent and has no outstanding debts or obligations may terminate its existence by

7.5.1. filing a statement of dissolution with the Secretary of State if the political committee was formed in support of a candidate for nomination or election to any office to be filled by voters of the entire state, or a candidate for nomination or election for any office encompassing an election district larger than a county, or the passage or defeat

of any issue, thing or item to be voted upon, encompassing an election larger than a county; or

7.5.2. filing a statement of dissolution with the county clerk or municipal clerk or recorder, or other such election officer as defined in 146CSR2-3.3.4 Code of Fair Campaign Practices, as may be deemed proper by the Secretary of State, if the political committee was formed in support of a candidate for nomination or election to any office to be filled by voters of a county or district therein, or for the passage or defeat of any issue, thing or item to be voted upon, encompassing the electorate of a county or district therein; and,

7.5.3. stating within such written request that the political committee will no longer receive any contributions or make any disbursements; and,

7.5.4. stating within such written request that the political committee has no outstanding debts or obligations; and,

7.5.5. stating within such written request that any excess funds of the political committee will be transferred to a political committee established by the same candidate, or established for the passage or defeat of the same issue, thing or item, or will be otherwise disbursed pursuant to section 6.2 above.

7.6 The Secretary of State's Office shall have the authority, upon the request of the committee, to make determinations as to the solvency or insolvency of a political committee, including

7.6.1 the orderly liquidation of an insolvent political committee; and

7.6.2. the orderly application of the assets of an insolvent political committee toward reduction of its outstanding debts; and

7.6.3. the assessment of any forgiven debts as being political contributions; and,

7.6.4. the termination of an insolvent political committee after the liquidation and application of assets.

#### **§146-3-8. Receiving, Distributing and Reporting Contributions and Expenditures.**

This section clarifies the handling and reporting requirements set forth in West Virginia Code §3-8-2 through 3-8-7.

8.1. The treasurer of a political committee or receives all contributions and

disburses all funds, and it is unlawful for a person or persons other than the treasurer to receive and disburse funds without the treasurer's knowledge and participation.

8.2. A candidate who does not appoint another person as financial agent or organize a candidate's committee and appoint a treasurer at least twenty-eight (28) days prior to the election at which he or she is to act shall be deemed to be the financial agent for his or her own campaign.

8.3. A financial report shall include all financial transactions occurring during the accounting period just completed, and any other financial transactions which have not been reported previously. Financial reports shall be in the form prescribed by the State Election Commission. ~~provided for in Addendum A of this rule~~

8.4. For the purpose of financial accounting and reporting, an election cycle is divided into accounting periods. The first accounting period begins on the date of the first financial transaction. The last day of each accounting period is the day before the next financial report may be filed. Accounting periods end on the following dates:

8.4.1. the day before the last Saturday in March of each year;

8.4.2. the eleventh day before the primary election;

8.4.3. the twenty-fourth day after the primary election;

8.4.4. the day before the last Saturday in September preceding the general election;

~~8.4.4.~~ 8.4.5. the eleventh day before the general election; and

~~8.4.5.~~ 8.4.6. the twenty-fourth day after the general election.

8.5. Financial reports may be filed, pursuant to West Virginia Code §3-8-5b,

8.5.1. by mail; or,

8.5.2. in person; or,

8.5.3. by facsimile or other electronic means of transmission.

8.6. Filing dates for each method of delivery shall be determined as follows:

8.6.1. For mailings, the filing date shall be the date of the postmark of the United States Postal Service;

8.6.2. For hand delivery, the filing date, shall be the date of delivery to the proper reporting agency or entity during regular business hours of such office;

8.6.3. The facsimile or other electronic means of transmission, the filing date shall be the date of delivery to the appropriate reporting agency or entity during regular business hours of such office.

8.7. Financial statement which are delivered by facsimile or other means of electronic transmission shall be limited in length to fifteen (15) pages, including a cover page. When delivered by a facsimile or other electronic means of transmission, original signed and sworn financial statements shall be postmarked or hand delivered to the appropriate reporting agency or entity within twenty-four (24) hours of the date of the facsimile or other means of electronic transmission.

8.8. For the purpose of reporting contributions, a contribution occurs on the date the check, cash or other thing of value is received by the treasurer. No person acting as agent for the candidate, treasurer or committee shall knowingly withhold a contribution from the treasurer to prevent the reporting of the contribution until a later reporting period.

8.9. For the purpose of reporting unpaid bills, a liability is incurred on the date a bill for goods received or services rendered is received by the treasurer.

8.10. For the purpose of reporting expenditures, an expenditure is made on the date the treasurer writes the check or transfers cash to any person to pay for goods or services rendered. No transfer may be made to an intermediary to avoid reporting an expenditure in a particular reporting period.

8.11. All independent expenditures must be reported according to the procedures outlined in West Virginia Code §3-8-2.

### **§146-3-9. State and Local Activity by Federal Committees.**

This rule clarifies the responsibilities and state reporting requirements of a political committee organized under the rules of the Federal Election Commission when that committee makes contributions to or direct expenditures on behalf of or in opposition to state or local candidates, political committees or ballot issues.

9.1. Nothing in this rule shall be construed to exempt a federal committee from the requirements of West Virginia Code §3-8-1 et seq. as to monies or other things of value received and disbursed for election expenses on behalf of state and local candidates, political committees and ballot issues.

9.2. When a federal committee maintains a state account, the treasurer shall not

place in its federal account funds which have been designated by the contributor for use in state, district, county and municipal election activities. Such funds shall be placed directly into the state account, and shall be subject to state reporting requirements and contribution limits.

9.3. The treasurer of a federal committee may not knowingly transfer into a state account or disburse on behalf of a state or local candidate or political committee any portion of an individual contributor's contribution which exceeds one thousand dollars (\$1,000) per election.

9.4. A federal committee which maintains a state account may comply with state reporting requirements by filing reports on the forms prescribed by the Secretary of State under the rules and at the times required by West Virginia Code and the Code of State Rules.

9.5. A federal committee which maintains only a federal account may comply with state reporting requirements by filing with the applicable federal report an addendum itemizing in the manner required by West Virginia State Code and the Code of State Rules:

9.5.1. all contributions and loans received from West Virginia residents;

9.5.2. all liabilities incurred or expenditures made to or on behalf of any state or local candidate, political committee or ballot issue; or

9.5.3. an oath given by the treasurer that the addendum contains a true and correct report of all financial transactions relating to state and local candidates, political committees or ballot issues in West Virginia.

#### **§146-3-10. Solicitation for Political Purposes.**

This section clarifies lawful and unlawful practices relating to solicitations for political purposes.

10.1. No person may lawfully solicit and accept funds for political purposes on behalf of any individual before that individual becomes a pre-candidate or a candidate as defined herein.

10.2. No person may lawfully solicit and accept funds on behalf of any political committee before that committee files a statement of organization and the appointment of a treasurer.

10.3. No person may lawfully solicit and accept funds on behalf of any candidate or any elected official if no outstanding debt remains from a previous election, except in

that a pre-candidate, candidate or political committee may solicit or accept funds if pre-candidacy papers have been filed for an upcoming primary or general election.

10.4. A person who solicits funds to retire a debt incurred for political purposes by a candidate or committee during a previous primary or general election is soliciting funds in connection with that campaign for nomination or election.

10.5. A solicitation which is broadcast by radio or television or published in a newspaper or other publication of general circulation shall not be deemed to violate any prohibition against solicitation of the members of specific groups.

10.6. A solicitation which is conducted randomly by such means as bulk mail to boxholders, broad literature distribution in a geographic area, or random-number telephone solicitations shall not be deemed to violate any prohibition against solicitation of the members of specific groups, providing solicitations of the members of specific groups are not knowingly and purposely included in the random solicitation.

10.7. A solicitation directed to individuals by name shall not be deemed to violate the prohibition against solicitation of public employees if that solicitation prominently contains the words "Please disregard if you are a public employee" or words to that effect, providing solicitations of members of prohibited groups are not knowingly and purposely included in the solicitation.

10.8. A solicitation specifically on behalf of one or more candidates for President, Vice President, U.S. Senate or U.S. House of Representatives is governed by the United States Code and the Code of Federal Regulations and is not subject to regulation by the state.

10.9. A solicitation within the state by a federal committee is subject to West Virginia Code and the West Virginia Code of State Rules, if all or part of any contribution received as a result of the solicitation is used to support one or more candidates in West Virginia.

### **§146-3-11. Procedures for Levying Civil Penalties**

This section establishes the procedures to be used to determine the implementation of W. Va. Code §3-8-7.

11.1. A campaign finance report shall not be found to be grossly incomplete or grossly inaccurate if:

11.1.1. the filing officer has notified, by certified mail, the individual or

committee responsible for filing the report that the report is incomplete or inaccurate;

11.1.2. corrections to such report are received by the filing officer no later than ten (10) days after the individual or committee has been notified of such inaccuracies; and

11.1.3. in the case of a financial statement due not less than seven nor more than ten days preceding each primary or other election, corrections to the report are received by the filing officer no later than twenty-four (24) hours after the individual or committee has been notified of such inaccuracies or deficiencies.

11.2. A report shall considered to be delinquent if:

11.2.1. It is received after the deadlines established by West Virginia Code §3-8-5; and

11.2.2. bears a U.S. Postal Service postmark dated after such deadline.

11.3. A report shall not be considered delinquent if:

11.3.1. The report is filed late due to the death of the candidate, treasurer, or other individual responsible for filing such reports; or

11.3.2. The report is filed late due to a serious illness of the candidate, treasurer, or other individual responsible for filing such reports; and

11.3.3. A written notification of either death or serious illness is received by the filing officer no later than sixty days after the last day the financial statement is due. Upon receipt of such notification, the filing officer may grant an extension of time for the filing of the financial statement.

#### **§146-3-12. Penalty Provision.**

12.1. Any person violating this rule shall be guilty a misdemeanor, and, upon conviction thereof, shall be fined not less than one thousand dollars, nor more than five thousand dollars, and shall be confined in jail for not less than six months nor more than one year.

## **ATTACHMENT**

### **COMMENT**

The Campaign Financial Statements F-7 and F-7A were attached to the proposed rule for informational purposes only. The reports are not part of the proposed rule.