

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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2007 JUL 27 AM 9:45

OFFICE WEST VIRGINIA
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: § 3-1A-5, 3-1A-6, 3-8-1, 3-8-11, 3-8-12, 3-9-12, 3-9-13, 3-9-16, WV S.C. of Appeals Order 16884

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Election Expenditures

IF NO, SERIES NUMBER OF 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.


Authorized Signature

PROPOSED LEGISLATIVE RULE §146-4

Election Expenditures

Brief Summary

The purpose of this rule is to update definitions to meet the current West Virginia Code definitions of the identical terms, to adjust the reimbursement to volunteer election workers for lawful election expenses, and to adjust the compensation that may be paid to election workers in an election.

FILED

TITLE 146
LEGISLATIVE RULE
ELECTION COMMISSION

2007 JUN 28 2007 JUL 27 AM 9:45

SERIES 4
ELECTION EXPENDITURES

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§146-4-1. General.

1.1. Scope. -- These legislative rules regulate the employment of election workers and regular campaign staff, rate of payment, method of payment, reporting requirements and forms utilized for compliance. These legislative rules apply to all municipal, county, state or national elections conducted in this State.

1.2. Authority. -- W. Va. Code §§3-1A-5, 3-1A-6, 3-8-1, 3-8-11, 3-8-12, 3-9-12, 3-9-13, 3-9-16 and West Virginia Supreme Court of Appeals Order No. 16884

1.3. Filing Date. --

1.4. Effective Date. --

§146-4-2. Policy.

The Legislature through West Virginia Code subsection (d), section six, article one-a; section one, article eight; subsection (c), section eleven; subsection (e), section twelve, article eight; sections twelve, thirteen and sixteen, article nine, all of chapter three clearly addresses the intent of the Legislature to prevent the buying and selling of votes. Pursuant to statutory authority, it is the policy of the State Election Commission and the Secretary of State that unreasonable, excessive and grossly disproportionate expenditure of money in relation to services rendered represents the buying of votes or influence to obtain a public office. The following rules are established to carry out this policy.

§146-4-3. Definitions.

3.1. "Paid Campaign Staff" means an individual employed by a ~~candidate, party~~

~~committee or political action committee~~ who works in excess of twenty (20) hours per week on a regular and continuing basis and who is paid a regular salary out of which is deducted withholding tax and social security obligations.

3.2. "Paid Election Worker" means an individual employed by a ~~candidate, party committee or political action committee~~ on an intermittent, temporary or irregular basis.

3.3. "Volunteer Election Worker" means an individual providing services to a ~~candidate or political committee~~ without pay or other compensation for services, not including expenses.

3.4. "Political Committee" means ~~an association of persons organized to advocate the election or defeat or one or more candidates or the passage or defeat of one or more ballot issues, and which is required to file a statement of organization pursuant to West Virginia Code section four, article eight, chapter three no later than twenty-eight (28) days before the election;~~ any candidate's committee, political action committee or political party committee.

3.5. "~~Candidate's Authorized Committee~~" means ~~a committee organized for the support of one (1) candidate with the knowledge and consent of that candidate;~~ a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered

one committee for the purpose of contribution limits.

3.6. "Political Party Committee" means the ~~municipal, county, district or state executive committee of a political party~~ a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination or defeat of a candidate in any election.

3.7. "Political Action 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~~ committee organized by one or more persons for the purpose of supporting or opposing the nomination or election of one or more candidates.

3.8. "Political Subdivision" means those precincts comprising the electoral district from which a candidate is to be elected. (i.e. senatorial district, delegate district)

§146-4-4. Exceptions.

4.1. Payments for contracted services with a person or business licensed to do business in the State of West Virginia are not limited by these regulations; Provided, however, That payments to election workers or campaign staff employed or provided by a licensed person or business on behalf of a candidate's ~~or~~ committee are subject to these regulations. Such paid election workers employed for election day work will be calculated as part of the total paid workers allowed for that candidate or committee pursuant to Section 8 of these rules.

4.2. The number of volunteer election workers utilized on election day is not limited by these regulations.

§146-4-5. Payment Of Election Workers.

5.1. An election worker's pay, including direct or indirect payments for expenses, shall not exceed ~~six-nine~~ fifty-seventy-five dollars (\$~~6-009.00~~ 50-0075.00) per hour up to a maximum of ~~fifty-seventy-five~~ fifty-seventy-five dollars (\$~~50-0075.00~~ 50-0075.00) per day regardless of the source or sources of the payment or the hours worked in any given day.

5.2. Payment shall be by check for any and all services provided or expenses incurred by any paid election worker.

5.3. Any check issued for payment to any paid election worker shall clearly indicate the name of the candidate's ~~or~~ committee issuing the check, and the name and social security number of the person to whom the check is issued.

5.4. No check may be issued to any paid election worker before that worker has submitted to the candidate's ~~or~~ committee an itemized statement on a form prescribed by the Secretary of State showing the specific work performed, the times and dates of the work and the amount of pay to be issued by the candidate or committee to the election worker for the work reported.

5.5. The candidate's ~~or~~ committee shall attach all itemized statements, upon which payment was made, with the financial statement, for the reporting period during which the check was issued.

5.6. The candidate's ~~or~~ committee shall comply with all Internal Revenue Service laws, regulations and reporting requirements as they relate to the payment of election workers.

§146-4-6. Payment Of Campaign Staff.

6.1. Paid campaign staff may be paid in excess of ~~fifty-seventy-five~~ fifty-seventy-five dollars (\$~~50-0075.00~~ 50-0075.00) per day, but such pay may not exceed that which is reasonable and fairly commensurate with similar services rendered in the private sector.

6.2. Payment shall be by check for any or all service provided by any paid campaign staff worker.

6.3. Any check issued for payment to any paid campaign staff worker shall clearly indicate the name of the organization or person issuing the check and the name and social security number of the person to whom the check is issued.

6.4. The candidate's or committee shall file with the financial statement the names and social security number of each paid campaign staff worker employed during the reporting period covered by the financial statement, along with the job title, description of duties, rate of pay, beginning and ending employment dates and work schedule of each paid campaign staff worker.

6.5. The ~~candidate, party committee or political~~ committee shall comply with all Internal Revenue Service laws, regulations and reporting requirements as they apply to the payment of campaign staff.

§146-4-7. Reimbursement For Expenses Of Volunteer Election Workers.

~~7.1. A candidate or committee may reimburse a volunteer election worker for actual expenses incurred up to a maximum of fifteen dollars (\$15.00) per day, except~~

7.1. A volunteer election worker may, by presentment of a receipt or receipts for the expenditures, be reimbursed for out-of-pocket purchases of goods or services made for the candidate's committee. Such out-of-pocket expenditure reimbursements shall be reflected in the candidate committee's financial report as an expenditure, as required by WV Code 3-8-5a(a)(8).

~~7.1.1 That a volunteer election worker may, by presentment of a receipt or receipts for the expenditures, be reimbursed for out-of-pocket purchases of goods or services made for the candidate's or committee. Such out-of-pocket expenditure reimbursements shall be reflected in the candidate's or committee's financial report.~~

7.2. Payment to a volunteer election worker

for any and all expenses incurred shall be made by the candidate or committee by check.

~~7.3. A volunteer election worker who receives a total reimbursement for expenses of fifty dollars (\$50) or more during any election campaign shall submit to the candidate or committee an itemized statement on a form prescribed by the Secretary of State showing the date, the specific amount and purpose of each expense incurred, the name of each vendor paid and the total amount of reimbursement to be received.~~

7.4. Reimbursement for mileage shall not exceed the current state-mandated reimbursement rate per mile.

~~7.5. The candidate or committee shall attach any forms itemizing expenditures to the post election financial statement.~~

§146-4-8. Employment Of Election Workers By Candidates Or Candidate's Authorized Committee.

8.1. Each ~~candidate or candidate's authorized committee, but not both,~~ may employ paid election workers solely for the candidate's personal campaign: Provided, however, That within the limits of one (1) election worker per precinct, as set forth in Section 8.2 of these rules, two (2) or more candidates' or candidates' authorized committees may jointly employ paid election workers only when the payment to each worker is equally divided among the candidate's or committees.

8.2. Under no circumstances shall a candidate or candidate's ~~authorized~~ committee employ directly or indirectly in excess of one (1) paid election worker per number of precincts within the area the candidate is seeking to represent. The total number of election worker(s) employed to work within any political subdivision shall not exceed the total number of precincts in which the candidate appears on the ballot within that political subdivision. The ~~candidate or candidate's authorized~~ committee may employ any number of worker(s) per day per political subdivision, so long as the total number of worker-days do not exceed

the number of precincts in the political subdivision. (Example: In a delegate district with thirty (30) precincts, thirty (30) workers may be employed for one (1) day; or, one (1) worker may be employed for thirty (30) days; or, three (3) workers may be employed for ten (10) days; or, any variation so long as the number of workers or worker-days do not exceed the total precincts within that delegate district).

8.3. A ~~candidate or candidate's~~ authorized committee may not make indirect contributions to other candidates or committees by having paid election workers drive voters, distribute literature or perform any other task on behalf of another candidate.

8.4. The ~~candidate or candidate's~~ authorized committee shall comply with all Internal Revenue Service laws, regulations and reporting requirements as they apply to the payment of campaign staff.

§146-4-9. Employment Of Election Workers By Party Committees.

9.1. Each party committee may employ election workers: Provided, however, That a municipal executive committee may not employ election workers on any county, district or statewide election day and a county, district or statewide executive committee may not employ election workers on any municipal election day.

9.2. Any state party executive committee may employ not more than one (1) paid election worker per precinct within any county.

9.3. Any county executive committee, or combination of county and district executive committees of the same political party, may employ not more than one (1) election worker per precinct within a county.

9.4. Any municipal executive committee may employ not more than one (1) paid election worker per precinct within the city.

§146-4-10. Employment Of Election Workers

By Political Action Committees.

10.1. Each political action committee may employ election workers.

10.2. Regardless of the number of candidates or issues supported or opposed by a political action committee, the total number of paid election workers employed by such committee to work within any county may not exceed the total number of precincts within that county in which candidates or issues supported or opposed appear on the ballot.

10.3. Each political action committee shall report the amount of expenditures made on behalf of each candidate or to promote the defeat of a candidate.

§146-4-11. Forms.

All forms necessary to comply with this rule shall be prescribed by the State Election Commission and available from the Secretary of State's office, county clerk's office, and the municipal election officer.

§146-4-12. Severability.

If any provision of these rules or the application to any person or circumstances shall be held invalid, such invalidity shall not affect the provision or application of these regulations which can be given effect without the invalid provision or application and to this end the provisions of these regulations are declared to be severable.

§146-4-13. Penalties.

Penalty for violation shall be as prescribed in W. Va. Code §3-9-23, as a misdemeanor, and, upon conviction shall be fined not more than one thousand dollars (\$1,000), or, in the discretion of the court, be confined in jail for not more than one (1) year.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Election Expenditures

Type of Rule: Legislative Interpretive Procedural

Agency: State Election Commission

Address: 1900 Kanawha Blvd., East Building 1 Suite 157-K Charleston, WV 25305

Phone Number: 1-304-558-6000 Email: ghoward@wvsos.com

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No fiscal impact from this rule.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00		
Personal Services	0.00		
Current Expenses	0.00		
Repairs & Alterations	0.00		
Assets	0.00		
Other	0.00		
2. Estimated Total Revenues	0.00		

Rule Title: _____

Rule Title: Election Expenditures

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

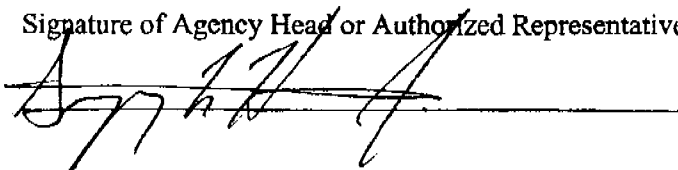
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date: 6/28/2007

Signature of Agency Head or Authorized Representative

A handwritten signature in black ink, appearing to be "S. J. ...", is written over a horizontal line.

Memorandum

To: Judy Cooper

From: Bryan Cummings

Date: 7/25/2007

Re: Legislative Rule - Title Number: 146 - Series Number: 4

No Comment Received.

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: 7/27/2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Election Commission
Building 1 Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305

LEGISLATIVE RULE TITLE: Election Expenditures

1. Authorizing statute(s) citation §3-1A-5, 3-1A-6, 3-8-1, 3-8-11, 3-8-12, 3-9-12, 3-9-13,
3-9-16, WV S.C. of Appeals Order 16884

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 28, 2007

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

c. Date of Public Hearing(s) or Public Comment Period ended:
July 27, 2007

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received X

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

July 27, 2007

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

State Election Commission
Greg Howard, Chief Counsel
Building 1 Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305

- 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)

State Election Commission
Bryan Cummings, Assistant to Counsel
Building 1 Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305

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 N/A