

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

Form #3

Do Not Mark In this Box

**FILED**

JUL 31 3 08 PM '95

OFFICE OF 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 & 6, 3-8-1, 11 & 12, 3-9-12, 13, & 16

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 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*

**STATEMENT OF CIRCUMSTANCES**  
146-4

This rule was required to be filed by Senate Bill 573 that became effective in June 1995.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Election Expenditures 146-4

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 Hechler

DATE: JULY 31, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: BILL HARRINGTON, CHIEF OF STAFF, SECRETARY OF STATE

LEGISLATIVE RULE TITLE: ELECTION EXPENDITURES

1. Authorizing statute(s) citation §§3-1A-5 & 6, 3-8-1, 11 & 12  
3-9-12, 13, & 16

2. a. Date filed in State Register with Notice of Hearing  
JUNE 30, 1995

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

PRESS RELEASE, AFFECTED PARTIES

c. Date of Hearing(s) JULY 31, 1995

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)

JULY 31, 1995

f. Name and phone number(s) of agency person(s) to  
contact for additional information:

BILL HARRINGTON

558-6000

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: 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

## SUMMARY

146-4

This rule allows greater flexibility in the way candidates and political action committees can spend there money. It also factors in inflation that has occured since the previous regulation were promulgated in 1987.

**FILED**

TITLE ~~153~~ 146  
LEGISLATIVE RULES  
ELECTION COMMISSION

Jul 31 3 08 PM '95

SERIES ~~10~~ 4  
ELECTION EXPENDITURES

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

~~§153-10~~ 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. -- ~~November 3, 1988~~

1.4. Effective Date. -- ~~November 3, 1988~~

~~§153-10~~ 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.

~~§153-10~~ 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 committee without pay or other compensation for services, not including expenses.

3.4. "Committee" means an association of persons organized to advocate the election or defeat of 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 ~~sixty (60)~~ twenty-eight (28) days before the election.

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.

3.6. "Party Committee" means the municipal, county, district or state executive committee of a political party.

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.

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)

~~§153-10~~ 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 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.

~~§153-10~~ 146-4-5. **Payment Of Election Workers.**

5.1. An election worker's pay, including direct or indirect payments for expenses, shall not exceed ~~five dollars (\$5.00)~~ six dollars (\$6.00) per hour up to a maximum of ~~thirty five dollars (\$35.00)~~ fifty dollars (\$50.00) 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 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 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 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 or committee shall comply with all Internal Revenue Service laws, regulations and reporting requirements as they relate to the payment of election workers.

**~~§153-10~~ 146-4-6. Payment Of Campaign Staff.**

6.1. Paid campaign staff may be paid in excess of ~~thirty five dollars (\$35.00)~~ fifty dollars (\$50.00) 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 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 committee shall comply with all Internal Revenue Service laws, regulations and reporting requirements as they apply to the payment of campaign staff.

**~~§153-10~~ 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

7.1.1 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 or committee. Such out-of-pocket expenditure reimbursements shall be reflected in the candidate'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 ~~twenty cents~~ (\$0.20) 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.

**~~§153-10~~ 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 candidates 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 county political subdivision shall not exceed the total number of precincts in which the candidate appears on the ballot within that county 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 candidates authorized committee shall comply with all Internal Revenue Service laws, regulations and reporting requirements as they apply to the payment of campaign staff.

**~~§153-10~~ 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.

**~~§153-10~~ 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.

~~§153-10~~ 146-4-11. Forms.

All forms necessary for the complying with these rules shall be prescribed by the ~~Secretary of State~~ State Election Commission and available from the ~~Secretary of State's office,~~ and county clerk's office, and the municipal election officer.

~~§153-10~~ 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.

~~§153-10~~ 146-4-13. Penalties.

Penalty for violation shall be as prescribed in West Virginia Code section twenty-three, article nine, chapter three, 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.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

STEPHEN N. REED  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 558-6000  
Corporations: (304) 558-8000  
FAX: (304) 558-0900



WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

PENNEY BARKER  
Supervisor, Corporations

## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

(Plus all the volunteer  
help we can get)

JULY 31, 1995

THREE COMMENTS WERE RECEIVED AND THESE CHANGES WERE MADE:

PAGE 2 - SECTION 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)" WAS ADDED

PAGE 4 - SECTION 8.2 THE WORD "worker(s) days WAS CHANGED TO "worker-days"

PAGE 4 - SECTION 8.2 THE WORD "county" WAS CHANGED TO "delegate district"

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Chuck Hamsher  
114 Lakeshore Drive  
Charleston, West Virginia 25313  
(304) 776-0366

July 28, 1995

The Honorable Ken Hechler  
Secretary of State  
Capitol Complex  
Charleston, West Virginia 25305

Dear Mr. Hechler:

This letter is intended to serve as comment on proposed Rules for changes to West Virginia Election Law brought about by passage by the West Virginia Legislature of S.B. 573, The Code of Fair Campaign Practices.

The proposed Rules state in §153-6-7:

Monies exceeding ten dollars (\$10.00) in amount expended by any person for printing, duplicating, or distributing of a scorecard, voter guide, or other written analysis of a candidate's position or votes on specific issues 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).

I would strongly urge this section to be changed as follows:

Printing, duplicating or distribution by any person, persons, or organization of more than 25 individual pieces of literature that serves as a scorecard, voter guide or other written analysis of a candidate's or candidates' position or votes on specific issues; or monies exceeding three dollars (\$3.00) in amount expended by any person, persons or organization for printing, duplicating, or distributing of a scorecard, voter guide, or other written analysis of a candidate's or candidates' position or votes on specific issues 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).

I believe these changes are needed to truly reflect the intent of this legislation. At the \$10.00 limit proposed it would be possible, utilizing desktop publishing and the like, to produce several thousand pieces of literature. The intent of the Legislature in passing this section of S.B. 573 was to insure that wide distribution of such materials be reported pursuant to West Virginia Code §3-8-1. I believe the changes I propose better reflect that intent while providing for de minimis activities of this sort by individuals.

July 28, 1995  
The Honorable Ken Hechler  
Page 2

The additional changes I propose are intended to further clarify that the requirements of this section apply to groups of individuals and/or organizations and if the literature pertains to one candidate or multiple candidates.

The other area I wish to address is the lack of specific procedures in proposed Rules regarding the assessment of civil penalties for failure to file financial disclosure statement or for filing of delinquent or incomplete statement as required in §3-8-7(4). It was clearly the intent of the Legislature that these procedures be part of the Rules promulgated by the Election Commission.

Thank you for the opportunity to comment on these proposed Rules. I hope you and the Election Commission will consider and adopt the changes I propose. If I can be of any assistance or provide any information please feel free to contact me at 545-6046.

Sincerely,

Chuck Hamsher

CTH/s

Carroll County  
Carolyn Taft  
P. O. Box 1120  
Ft. Ashby, WV 26719  
(304) 298 3917

July 23, 1995

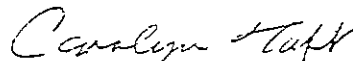
Secretary of State,  
Election Division  
Bldg. 1, Room 157-K  
Charleston, WV 25305

Dear Mr. Secretary:

I would like to comment on Rule 6.7, page 9 of the Election Commission rules to implement the Code of Fair Campaign Practices (SB 573).

I believe that an expenditure limit of \$10 as a threshold for reporting distribution of campaign literature does not take into consideration the large number of flyers or leaflets which can be produced and distributed in this age of personal computers. I would think that \$10 could provide up to 1,000 items. Perhaps a better solution would be to limit the production and distribution of campaign items to around 25 with an expenditure limit of \$3 before reporting is required.

Sincerely,



Carolyn Taft

# FAX COVER

July 31, 1995

To: Bill Harrington

Fax#: 558-0900

From: Chuck Hamsher

Comments: Example of election piece. Staple has 500 sheet reams of paper at \$4.49 each. 1000 sheets = \$8.98. 1000 x 4 = 4000 pieces.

Call 304-345-6046 if you have questions regarding this transmission.

This fax is 2 pages in length including cover

**URGENT  
FOR ELECTIONS COMMISSION  
MEETING**

Ken Hechler &  
The Elections  
Commission

**APPROVED**

The Code of Fair  
Campaign Practices Rules

Remember this  
when you Vote!

4,000 pieces of this SAMPLE campaign  
piece can be produced for under \$10.00!!  
Paid for by Chuck Hamsher

Ken Hechler &  
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