

Form #6

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Robert L. Jancovitz

TITLE 158

LEGISLATIVE RULES FOR THE WEST VIRGINIA ETHICS COMMISSION

SERIES 2 ADVISORY OPINIONS

158-2-1 General Provisions

1.1 Scope--This legislative rule sets forth the practice and procedure established by the West Virginia Ethics Commission for carrying out its responsibilities in the issuance of advisory opinions pursuant to the West Virginia Governmental Ethics Act, (hereafter referred to as the "Act") West Virginia Code 6B-1-1 et seq.

1.2 Authority-- W.Va. Code §6B-2-2.

1.3 Filing Date--

1.4 Effective Date--

1.5 This Rule repeals and replaces Procedural Rules for the West Virginia Ethics Commission, Advisory Opinions, 158 CSR.

158-2-2 Advisory Opinions

2.1 All persons subject to West Virginia Code 6B-1-1 et seq. may make application for an advisory opinion. All applications for advisory opinions must be written and directed to the West Virginia Ethics Commission at the Litton Building, 1207 Quarrier Street, Charleston, West Virginia 25301.

2.2 All applications for advisory opinions must contain the name, address and telephone number of the applicant in the event additional information is needed.

2.3 All applications for advisory opinions should fully describe the applicant's official position, employment, or status under the Act.

2.4 All applications for advisory opinions should contain an explanation or paragraph summarizing the conduct for which the application is being made.

2.5 The Commission shall respond within thirty days from the receipt of the application by issuing an advisory opinion on the matter raised in the application. The date of receipt by the Commission is the Commission's next regular monthly meeting.

2.6 When additional information is needed to fully respond to the advisory opinion application the Commission may extend the thirty day period until the necessary information is supplied by the applicant or until the Commission's next regular meeting.

2.7 All advisory opinions are published and indexed in the Code of State Rules by the Secretary of State whose office can provide copies to the public upon request.

SENATE BILL NO. ~~137~~

(By Senator Manchin)

[Introduced March 1, 1993; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact section eight, article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the ethics commission to promulgate legislative rules relating to advisory opinions.

Be it enacted by the Legislature of West Virginia:

That section eight, article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO
PROMULGATE LEGISLATIVE RULES.

§64-2-8. Ethics commission.

(a) The legislative rules filed in the state register on the thirty-first day of January, one thousand nine hundred ninety-one, modified by the ethics commission to meet the

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the thirty-first day of October,
3 one thousand nine hundred ninety-one, relating to the ethics
4 commission (contributions), are authorized, with the amendment
5 set forth below:

6 On page one, subsection 3.4, by striking out the words "use
7 their official title or position in the endorsement or support
8 of" and inserting in lieu thereof "endorse".

9 (b) The legislative rules filed in the state register on the
10 thirty-first day of January, one thousand nine hundred
11 ninety-one, modified by the ethics commission to meet the
12 objections of the legislative rule-making review committee and
13 refiled in the state register on the thirty-first day of October,
14 one thousand nine hundred ninety-one, relating to the ethics
15 commission (gifts), are authorized, with the amendments set forth
16 below:

17 On page two, subsection 3.1, by striking out the word
18 "significant";

19 On page two, section four, subsection 4.1, by striking out
20 "\$20" and inserting in lieu thereof "\$25";

21 On page three, subsection 4.2, after the words "hotel room"
22 by inserting a period and striking out the remainder of the
23 sentence;

24 On page three, subsection 5.1, by striking out the word
25 "unlawful" and inserting in lieu thereof "improper";

1 On page three, subsection 5.1, after the words "health club
2 fees" by striking out the period and adding ", unless such
3 expenses are offered to all of the panelists or speakers.";

4 On page four, subsection 6.2, by striking out the word
5 "unlawful" and inserting in lieu thereof "improper".

6 And,

7 On page four, section 7, at the end of the section by
8 striking out the period and adding the following: ": Provided,
9 That public officials and public employees may accept
10 complimentary tickets to sporting events, if the tickets are
11 incidental to the conduct of their official or ceremonial
12 duties."

13 (c) The legislative rules filed in the state register on the
14 thirty-first day of January, one thousand nine hundred
15 ninety-one, modified by the ethics commission to meet the
16 objections of the legislative rule-making review committee and
17 refiled in the state register on the thirty-first day of October,
18 one thousand nine hundred ninety-one, relating to the ethics
19 commission (interest in public contracts), are authorized, with
20 the amendment set forth below:

21 On page two, subsection 6.2, by striking out the words
22 "complete in every particular and including the exact" and
23 inserting in lieu thereof "including the".

24 (d) The legislative rules filed in the state register on the
25 thirty-first day of January, one thousand nine hundred

1 ninety-one, modified by the ethics commission to meet the
2 objections of the legislative rule-making review committee and
3 refiled in the state register on the thirty-first day of October,
4 one thousand nine hundred ninety-one, relating to the ethics
5 commission (lobbying), are authorized, with the amendment set
6 forth below:

7 On page three, subsection 4.3, after the words "copies of
8 forms" by inserting a period and striking out the remainder of
9 the sentence.

10 (e) The legislative rules filed in the state register on the
11 thirty-first day of January, one thousand nine hundred
12 ninety-one, modified by the ethics commission to meet the
13 objections of the legislative rule-making review committee and
14 refiled in the state register on the seventeenth day of December,
15 one thousand nine hundred ninety-one, relating to the ethics
16 commission (private gain), are authorized, with the amendments
17 set forth below:

18 On page one, subsection 2.2, after the words "A public
19 official" by inserting "acting in his or her capacity as a public
20 official";

21 On page one, subsection 2.2, after the words "the public
22 official." by adding a new sentence to read as follows: "The
23 provisions of this subsection shall not apply to a public
24 official acting in his or her private capacity.";

25 On pages one and two, by striking out all of section three;

1 On pages two through four, by renumbering the remaining
2 sections;

3 On page two, subsection 4.1, by striking out the words
4 "persons in high office" and inserting in lieu thereof "a public
5 official or public employee";

6 On page two, subsection 4.1, by striking out the words "close
7 friends" and inserting in lieu thereof "cohabitating sexual
8 partners";

9 On page two, subsection 4.2, after the word "sister" by
10 striking out the remainder of the sentence and inserting in lieu
11 thereof "or spouse.";

12 On page two, subsection 4.3, by striking out the words "close
13 friend" and inserting in lieu thereof "cohabitating sexual
14 partner";

15 On page three, subdivision 4.3.b, by striking out the words
16 "close friend" and inserting in lieu thereof "cohabitating sexual
17 partner";

18 On page three, by striking out all of paragraph 4.3.b.2 and
19 inserting in lieu thereof a new paragraph 4.3.b.2 to read as
20 follows:

21 "A public official or public employee should at least have
22 some independent person take part in the selection. He or she
23 should avoid using a subordinate for the independent person.";

24 On page three, by striking out all of subsection 4.4 and
25 inserting in lieu thereof a new subsection to read as follows:

1 "4.4 All hiring by public officials and public employees of
2 relatives prior to the twenty-ninth day of February, one thousand
3 nine hundred ninety-two is not subject to review under the ethics
4 act, in Chapter 6B of the W. Va. Code.";

5 On page three, subsection 4.5, by striking out the words
6 "close friend" and inserting in lieu thereof "cohabitating sexual
7 partner";

8 On page three, after subsection 4.5, by adding thereto a new
9 subsection, designated subsection 4.6, to read as follows:

10 "4.6 It is improper for a public official or public employee
11 to terminate the employment of a person without sufficient cause
12 for the purpose of hiring a relative, friend or political
13 supporter.";

14 On page three, subsection 5.2, after the words "supervisor
15 during work hours.", by adding the following sentence: "This
16 subsection does not apply to de minimus work or services.";

17 On page four, by striking out all of subsection 6.2 and
18 inserting in lieu thereof a new subsection 6.2, to read as
19 follows:

20 "6.2 Improper Use - Public officials and public employees
21 shall not use government property for personal projects or
22 activities that result in private gain. This subsection does not
23 apply to the de minimus use of government property.";

24 And,

1 On page four, by striking out all of section 9 and inserting
2 in lieu thereof a new section 9 to read as follows:

3 "Full-time appointed public officials and part-time and
4 full-time public employees may not receive private compensation
5 for performing private work during public work hours. This
6 section shall not apply to de minimus private work."

7 (f) The legislative rules filed in the state register on the
8 thirty-first day of January, one thousand nine hundred
9 ninety-one, modified by the ethics commission to meet the
10 objections of the legislative rule-making review committee and
11 refiled in the state register on the seventeenth day of December,
12 one thousand nine hundred ninety-one, relating to the ethics
13 commission (voting), are authorized, with the amendments set
14 forth below:

15 On page one, subsection 2.2, by striking out the second and
16 third paragraphs of subsection 2.2;

17 And,

18 On page one, after subsection 2.3, by adding a new
19 subsection, designated subsection 2.4 to read as follows:

20 "2.4 In any case where a Senator or Delegate is voting as
21 part of their official duties of office, the members of the
22 Senate and the members of the House of Delegates are governed by
23 the rules of their respective houses. The provisions of
24 subsection 2.3 of this rule shall not apply to members of the
25 Legislature when acting as a member thereof."

1 (g) The legislative rules filed in the state register on the
2 thirty-first day of January, one thousand nine hundred
3 ninety-one, modified by the ethics commission to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the seventeenth day of December,
6 one thousand nine hundred ninety-one, relating to the ethics
7 commission (employment), are authorized, with the amendments set
8 forth below:

9 On page two, subsection 3.3, by striking out the words "if
10 there is a reasonable probability that the person will be
11 regulated. There must be" and inserting in lieu thereof "upon";

12 On page two, subdivision 4.2.c, after the word "prohibition"
13 by inserting the words "for all practical purposes";

14 On page three, by striking out all of subsections 4.5, 4.6
15 and 4.7;

16 And,

17 On page three, by renumbering the remaining subsections.

18 (h) The legislative rules filed in the state register on the
19 ninth day of September, one thousand nine hundred ninety-two,
20 modified by the ethics commission to meet the objections of the
21 legislative rule-making review committee and refiled in the state
22 register on the twentieth day of January, one thousand nine
23 hundred ninety-three, relating to the ethics commission (advisory
24 opinions), are authorized.

25

1 NOTE: The purpose of this bill is to authorize the Ethics
2 Commission to promulgate legislative rules relating to advisory
3 opinions.

4
5 Strike-throughs indicate language that would be stricken from
6 the present law, and underscoring indicates new language that
7 would be added.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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SECRETARY OF STATE

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(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FILED
AUG 11 9 33 AM '93

TO: Lucy Sucky

AGENCY: Ethics Commission

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 26, 1993

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: 158 Ethics Commission

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

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

SIGNED: Robert J. Lunsford

TITLE OF PERSON SIGNING: Council

DATE: Aug. 10, 1993

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

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
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CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

May 28, 1993

Lucy Sucky
Ethics Commission
1207 Quarrier Street
Charleston, WV 25301

HB 100 authorizing, **Title 158, Series 2, Advisory Opinions**, passed the Legislature on **May 26, 1993**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs HB 100, 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. Authorization for your legislative rule is cited in **HB 100** section **64-2-8(j)**. 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 COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, PLEASE SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, 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 call our office.

Thank You
Administrative Law Division