WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #8

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

March 2, 1994 Je

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158

DATE EMERGENCY RULE WAS ORIGINALLY FILED: Jan. 10, 1994

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

Yes.

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

No.

DATE OF FIRST EMERGENCY AMENDMENT: ____________

SERIES NUMBER OF RULE: 4 TITLE OF RULE: Guidelines and Standards For Determining the Existence of Disqualifying Financial Interests.

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

It is the intention of the Commission to disallow substantial financial transactions between designated public servants and persons or business entities seeking to provide specified services to the Authorities while not disqualifying nominal transactions or gifts. Also, "designated public servants" should not include members of the legislature unless they personally and substantially influence the Authorities' discretion in choosing a provider of specified services.

4.20

Use Additional Sheets If Necessary.

Robert Harman
Signature

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
State Capitol
Charleston, WV 25305

Gaston Caperton
Governor

Chuck Polan
Cabinet Secretary

FILED
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

February 15, 1994

Honorable Ken Hechler
Secretary of State
Suite 157-K
Capitol Building
Charleston, West Virginia 25305

Re: Emergency Rules
for West Virginia Ethics Commission

Dear Mr. Hechler:

Approval is hereby given for filing of the enclosed amended emergency rules and regulations of the West Virginia Ethics Commission, entitled "Guidelines and Standards for Determining the Existence of Disqualifying Financial Interests" are in accordance with the West Virginia Code.

Sincerely,

Chuck Polan

Chuck Polan
Secretary

CP:tj

Attachment

BRIEF SUMMARY AND
STATEMENT OF CIRCUMSTANCES

In the last extraordinary session, the legislature passed Senate Bills 100 and 101 which direct the Ethics Commission to promulgate emergency rules by December 15, 1993 to establish guidelines and standards for the implementation of WV Code § 18-9D-17(c) and 31-20-28(c). The legislature found that continued public confidence in the sale of bonds required emergency rules to aid in the prevention of persons from profiting from the issuance of bonds because of influence based upon business or transactions with public servants on a personal, private basis.

These Amendments clarify the application of the existing guidelines in the current emergency rule. They ensure that substantial financial transactions will be disqualifying while nominal gifts or transactions will not. They also clarify that legislators are not "designated public servants" unless they substantially and personally influence the Authorities' discretion in choosing providers of specified services in connection with the issuance of bonds or other securities.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Guidelines and Standards for determining the Existence of Disqualifying Financial Interests.

Type of Rule: ____Legislative ____Interpretive ____~~Emergency~~ (amended)

Agency WV Ethics Commission

Address 1207 Quarrier St.

Charleston WV 25301

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$ 0	$ 0	$ 0	$ 0	$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. **Explanation of above estimates:**

The proposed rule does not add any additional responsibilities to either the WVEC or the Authorities

3. **Objectives of these rules:**

To comply with the legislative mandate contained in Senate bills 100 and 101 which require the Ethics Commission to promulgate an emergency rule establishing guildellines and standards for the implementation of WV Code §§ 18-9D-17(c) and 31-20-28(c).

These amended rules clarify the existing emergency rules

Rule Title: Guidelines and Standards for Determining the Existence of Disqualifying Financial Interests

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.

The rule could prevent certain persons or business entities from providing financial services to the Authorities in connection with the issuance of bonds or other securities.

C. Economic Impact on Citizens/Public at Large.

None

Date: February 14, 1994

Signature of Agency Head or Authorized Reprensentative

Robert L. [signature]

DATE: February 14, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV Ethics Commission

EMERGENCY RULE TITLE: Guidelines and Standards for Determining the Existence of Disqualifying Financial Interests

1. **Date of Filing** February 14, 1994

2. **Statutory authority for promulgating emergency rule:**

   WV Code §§18-9D-17(c) and 31-20-28(c)

3. **Date of filing of proposed legislative rule:** February 14, 1994

4. **Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?**

   It adopts new language

5. **Has the same or similar emergency rule previously been filed and expired?**

   No

6. **State, with particularity, those facts and circumstances which make the emergency rule necessary for the <u>immediate</u> preservation of public peace, health, safety or welfare.**

   The legislature found that continued public confidence in the sale of bonds or other securities required standards to prevent persons or business entitties to profit because of influence based upon the existence of business or transactions with public servants. Since bonds may be issued soon to take advantage of favorable interest rates and meet the needs of many communities to build or refurbish educational facilities, the legislature required emergency rules to establish standards and guidelines for the authorities to use. The Amendments to the emergency rule clarify the application of thsoe standards and guidelines.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

WV Code §§18-9D-17(c) and 31-20-28(c) required the Ethics Commission to promulgate emergency rules by December 15, 1993. The attached rules are an amended version of what is in effect now.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See response to question 6, above

TITLE 158
AMENDED EMERGENCY RULE
WEST VIRGINIA ETHICS COMMISSION

SERIES 4
GUIDELINES AND STANDARDS FOR DETERMINING THE EXISTENCE OF DISQUALIFYING FINANCIAL INTERESTS

§158-4-1 General Provisions.

1.1 Scope. -- These emergency rules set forth the guidelines and standards established by the West Virginia Ethics Commission for use by the School Building Authority and the Regional Jail and Correctional Facility Authority in identifying persons and business entities required to be disqualified from providing services to the Authorities in connection with the issuance of bonds or other securities.

1.2 Authority. -- W. Va. Code §§18-9D-17(c) and 31-20-28(c).

1.3 Filing Date. -- ~~December 13, 1993.~~

1.4 Effective Date. -- ~~January 10, 1994.~~

§158-4-2 Definitions.

2.1 "Persons and business entities" means an individual, corporation, association, firm, partnership, limited partnership, committee, or other organization or group of persons, irrespective of the denomination given such organization or group.

2.2 "Specified services" means acting as an investment adviser, underwriter, broker, dealer, government securities broker, government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant.

2.3 " Person associated with" means association as employee who exercises discretion in the operation of the entity, officer, trustee, agent, or the owner of an interest in the business entity greater than ten per cent [10%] or thirty thousand dollars [$30,000].

2.4 "Substantial financial investment" means an aggregate financial commitment of $1,000 or more by a person or business entity and/or any person associated with them.

2.5 "Significant financial interest" means an interest worth $1,000 or more.

2.4~~6~~ "Designated public servant" means a public officer, employee, agent or attorney of State government ~~who is capable of influencing Authority decisions~~ with the authority to make, or join in making, or who, lacking such authority has in fact personally and substantially influenced the making of, discretionary actions of the Authority regarding the issuance of bonds or other securities. Members of the WV Legislature will not be considered designated public servants, unless they are found by the Authority to have personally and substantially influenced its discretionary action.

2.5 "Authority" means the West Virginia School Building Authority and the West Virginia Regional Jail and Correctional Facility Authority.

§158-4-3 Guidelines and Standards.

3.1 It shall be deemed contrary to the public interest for persons and business entities to provide, and they shall be disqualified from providing, specified services to the Authority in regard to the issuance of bonds or other securities, if after notice and an opportunity for a hearing the Authority finds that they, or any person associated with them ~~, gave or promised to give to a designated public servant~~:

1.) ~~Any~~ Gave or promised to give to a designated public servant, or a member of his or her immediate family, any special rate or terms, of more than $25 value, not available to the general public;

2.) ~~Any gift or~~ Gave or promised to give any political contribution in excess of the allowable limits as set forth in W.Va. Code, Article 8, Chapter 3, to a designated public servant or to a political campaign committee of a designated public servant;

3.) Gave or promised to give a gift of more than $25 value to a designated public servant or a member of his or her immediate family;

~~3~~4.) ~~Any form of~~ Made any form of an employment offer ~~made~~ to a designated public servant or member of his or her immediate family as an inducement to receive favorable consideration in a contract for specified services; or

~~4.) If it is likely that a designated public servant would obtain compensation if a particular person or business entity provides specified services to the Authority regarding the issuance of bonds or other securities.~~

5.) Currently has, or has offered to make in the future, a substantial financial investment in any business transaction in which a significant financial interest is held by a designated public servant, or a member of his or her immediate family.

3.2 It shall be deemed contrary to the public interest for persons and business entities to provide, and they shall be disqualified from providing, specified services to the Authority in regard to the issuance of bonds or other securities, if after notice and an opportunity for a hearing the Authority finds that it is likely that a designated public servant will obtain compensation beyond his or her official salary, if they are selected to provide specified services to the Authority regarding the issuance of bonds or other securities.

3.~~2~~3 The provisions contained in subsections 3.1 and 3.2 of this rule shall apply only to actions taken by persons and business entities, or persons associated with ~~such business entities~~ them, from the date the Authority announces, or such earlier date they have knowledge the Authority will have, a need for specified services in connection with the issuance of bonds or other securities, through the date the bonds are issued.

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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(Plus all the volunteer help we can get)

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March 2, 1994

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Ethics Commission

RULE: New Rule, Series 4, Guidelines and Standards for Determining the Existence of Disqualifying Financial Interests

DATE EMERGENCY AMENDMENT FILED: February 15, 1994
DATE ORIGINALLY FILED AS AN EMERGENCY RULE: December 13, 1993

DECISION NO. 7-94

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

Ken Hechler

KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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DECISION EMERGENCY RULE DECISION
(ERD 7-94)

AGENCY: West Virginia Ethics Commission
RULE: New Rule, Series 4, Guidelines and Standards for Determining the Existence of Disqualifying Financial Interests
DATE EMERGENCY AMENDMENT FILED: February 15, 1994
ORIGINALLY FILED AS AN EMERGENCY RULE: December 13, 1993

par. 1 The West Virginia Ethics Commission (Commission) has filed the above emergency amendment to a new rule as an emergency rule.

par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.

par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a(b)].

par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).

par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Commission filed this emergency rule with supporting documents with the Secretary of State February 15, 1994 and with the LRMRC February 15, 1994.

par. 7 It is the determination of the Secretary of State that the Commission has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code 18-9D-17(c) reads:

When issuing its bonds or other securities pursuant to the provisions of this article, the school building authority shall not employ or contract with any person or business entity acting as an investment adviser, underwriter, broker, dealer, government securities broker, government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant, if the authority finds, on the record after notice and opportunity for hearing, that employing or contracting with such person or business entity would be contrary to the public interest, and that such person or business entity, or any person associated with such person or entity, whether prior to or subsequent to becoming so associated, has conducted or is conducting any business or transaction in which a financial interest is held by a public officer or employee, agent or attorney of the government of this state, or a member of the immediate family of such persons, if the public officer or employee, agent or attorney is in a position whereby he or she may personally and substantially influence the discretionary actions of the authority in connection with the issuance of bonds or other securities, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise: Provided, That the ethics commission shall, on or before the fifteenth day of December, one thousand nine hundred ninety-three, promulgate an emergency rule to establish guidelines and standards for the implementation of this subsection by the authority.

par. 9 WV Code §31-20-28(c) further states:

When issuing its bonds or other securities pursuant to the provisions of this article, the regional jail and correctional facility authority shall not employ or contract with any person or business entity acting as an investment adviser, underwriter, broker, dealer, government securities broker, government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant, if the authority finds, on the record after notice and opportunity for hearing, that employing or contracting with such person or business entity would be contrary to the public interest, and that such person or business entity, or any person associated with such person or entity, whether prior to or subsequent to becoming so associated, has conducted or is conducting any business or transaction in which a financial interest is held by a public officer or employee, agent or attorney of the government of this state, or a member of the immediate family of such persons, if the public officer or employee, agent or attorney is in a position whereby he or she may personally and substantially influence the discretionary actions of the authority in connection with the issuance of bonds or other securities, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, *or otherwise: Provided, That the ethics commission shall, on or before the fifteenth day of December, one thousand nine hundred ninety-three, promulgate an emergency rule to establish guidelines and standards for the implementation of this subsection by the authority.*

par. 10 It is the determination of the Secretary of State that the Commission has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency -- WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The facts and circumstances as presented by the Commission are as follows:

It is the intention of the Commission to disallow substantial financial transactions between designated public servants and persons or business entities seeking to provide specified services to the Authorities while not disqualifying nominal transactions or gifts. Also, "designated public servants" should not include members of the legislature unless they personally and substantially influence the Authorities' discretion in choosing a provider of specified services.

par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "time limitation" due to the Legislature mandating the promulgation of this rule as an emergency rule par. 15 This decision shall be cited as Emergency Rule Decision 7-94 or ERD 7-94 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Ethics Commission, the Attorney General and the Legislative Rule Making Review Commission.

Ken Hechler

KEN HECHLER
Secretary of State

Entered________________________________

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SECRETARY OF STATE