

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED

1991 JAN 31 PM 3:00

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: Dept. of Admn., WV Ethics Commission TITLE NUMBER: 158

CITE AUTHORITY WV Code Section 6B-2-5(b)

AMENDMENT TO AN EXISTING RULE: YES NO XX

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 158-6

TITLE OF RULE BEING PROPOSED: Private Gain

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.



DATE: 1/30/91

FILED

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: Richard Alker, Executive Director, WV Ethics Commission
LEGISLATIVE RULE TITLE: Private Gain 158-6

JAN 31 PM 3:01
OFFICE OF THE CLERK OF THE HOUSE OF DELEGATES
CAPITOL BUILDING
CHARLESTON, WEST VIRGINIA 25304
SECRETARY OF STATE

1. Authorizing statute(s) citation WV Code Sec. 6B-2-5(b)

2. a. Date filed in State Register with Notice of Hearing:

August 8, 1990

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

none

c. Date of hearing (s): Comment period ended Sept. 14, 1990

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

Attached No comments received xx

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

1-30-91

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

Richard Alker, Executive Director

WV Ethics Commission

348--0664

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: _____

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

d. Attach findings and determinations and reasons:

Attached _____

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: 11/30/91

Signature of Agency Head or Authorized Representative

R. M. Allen

SERIES 6

FILED

158-6-1 PRIVATE GAIN

AUG -8 PM 3:20

1.1 Scope -- These legislative rules establish the guidelines concerning private gain for persons covered by the WV Governmental Ethics Act.

1.2 Authority -- WV Code Section 6B-2-5(b)

1.3 Filing Date --

1.4 Effective Date --

158-6-2 Exceptions to using office for private gain

2.1 The performance of certain acts does not constitute a public official or public employee's improper use of office for private gain if they perform:

- a. usual and customary duties associated with the office or position, or
- b. services relating to the advancement of public policy goals, or
- c. constituent services without compensation.

2.2 A public official is not prohibited from making an inquiry for information on behalf of a constituent provided that no fee, reward, or other thing of value is directly or indirectly accepted by the public official.

2.3 When public officials and public employees whose job responsibilities anticipate such, travel outside the State to attend seminars or inspect certain facilities or products on behalf of their governmental agency this would be considered performing usual and customary duties associated with the person's office.

158-6-3 Bonus Points/Other Promotional Benefits

3.1 Public officials and public employees **may not** use bonus points or other promotional items for their private benefit when they are obtained from purchases paid for by the State or are reimbursed with State taxpayer's money.

3.2 Public officials and public employees **may** use bonus points and other promotional items for their private benefit when they participate in these programs at their own expense.

3.3 Public officials and public employees may receive any bonus points or benefits that may accumulate for their private use when they use personal funds to pay an amount charged in excess of that reimbursed with State funds.

3.4 Public officials and public employees have the responsibility of maintaining a separate account of bonus points or other promotional benefits accumulated with private funds.

3.5 Public officials and public employees may accept less expensive rates for hotel rooms when they are conducting official business at the state's expense and are given such benefit as a member of a class.

3.6 Public officials and public employees shall use bonus points and other promotional benefits that accumulate after October 1, 1989 for their future travel on official business when the State has reimbursed or paid the expenses which were used to obtain these benefits.

158-6-4 Nepotism

4.1 Definition - favoritism shown or patronage granted by persons in high office to relatives or close friends in employment matters without giving public notice and consideration to other applicants or qualifications required to perform the job.

4.2 "Relatives" are defined as individuals who are related to the public official or public employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.

4.3 A public official or public employee may avoid the appearance of nepotism by following these steps in hiring a relative or close friend for a public position:

a. *Give the public reasonable advance notice of the availability of the job.*

1. The notice should include a description of the job responsibilities, the qualifications required, the pay and the manner in which application for the job can be made.
2. The method of giving notice will of course vary from job to job but there must be reasonable public awareness of the availability of the job. Newspaper want ads and notices on the bulletin boards in public areas of the building are the most obvious and effective methods.
3. The notice must be made soon enough to give those members of the public who are interested an opportunity to make application.

b. *Involve an objective, independent third party in the selection where a close friend or family member is among those who have made application for the job.*

1. To the extent possible, stay out of the selection process altogether. If you are one of several people with the authority to hire, let the others with

authority make the selection. If appropriate, have the matter handled by your supervisor, or in the case of an elected official by a qualified person in another office.

2. If you don't feel you can, or should, totally avoid involvement in the decision, you should at least have some independent person(s) take part in the selection. Avoid using a subordinate for this independent person.
3. If you must share in the decision, exercise your best objective judgment in making the selection, and be prepared to justify your selection.

4.4 All hiring by public officials and public employees of relatives or close friends prior to October 1, 1989 shall not be subject to review under the Ethics Act unless a related private gain ensues in the form of a promotion, pay raise or other such benefit to the relative or close friend after October 1, 1989.

4.5 A public official should not use his position for the private gain of a relative or close friend by improperly giving bonuses, raises or other employment benefits to such person.

158-6-5 Use of "Subordinate" for Private Gain

5.1 After work hours - Public officials and public employees are prohibited from using subordinate employees for their private gain as an implied or express condition to their continued employment. An example of prohibited conduct would be a public official requiring a subordinate employee to perform personal errands for the official in order to maintain his or her public employment.

5.2 During work hours - Public officials and public employees are prohibited from using subordinate employees during work hours to perform private work or provide personal services for their benefit. An example of this would be a public employee supervisor requiring state employees to repair a garage or pave a driveway for the supervisor during work hours.

158-6-6 Use or removal of government "property"

6.1 Removal - Public officials and public employees shall not remove government property from the work-place for their private benefit.

6.2 Improper Use - It shall be unlawful for public officials and public employees to use government property for personal projects or activities that result in private gain.

158-6-7 Kickbacks

It shall be unlawful for a public official or public employee to accept any money or thing of value from any person for providing business or other benefits to that person through the public official or public employee's governmental agency or as a result of his influence and control.

158-6-8 Bribes

It shall be unlawful for a public official or employee to receive money or any thing of value from any person for the purpose of influencing or persuading the official to perform his duties in a manner to benefit such person.

158-6-9 Private work during Public work hours

Public officials and public employees are not permitted to receive private compensation for performing private work during time they are compensated by the governmental agency.

158-6-10 Exemption Categories

10.1 Certain public officials or public employees including those identified in 11.1 bring to their respective offices or employment their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. The requirements to obtain an exemption and avoid improperly using their office for private gain are set out below:

- a. the public office held or the public employment engaged in is **not** such that it would ordinarily be available or offered to a **substantial number of the citizens** of this state;
- b. the office held or the employment engaged in is such that it normally or specifically requires a person who possesses **personal prestige**; and
- c. the person's employment contract or letter of appointment provides or **anticipates** that the **person will gain financially** from activities which are not a part of his or her office or employment.

10.2 The following is a list of categories of individuals that may be granted an exemption on a case-by-case basis when they meet the requirements set out in 11.2 below:

- a. Part-time Prosecuting Attorneys
- b. Part-time Family Law Masters
- c. State University and College Board of Directors or Trustees
- d. State University and College Presidents

SUMMARY

158-6 PRIVATE GAIN

These legislative rules establish the guidelines concerning private gain for persons covered by the WV Governmental Ethics Act.



STATE OF WEST VIRGINIA
WEST VIRGINIA ETHICS COMMISSION
4TH FLOOR — LITTON BUILDING
1207 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301
(304) 348-0664

RICHARD M. ALKER
EXECUTIVE DIRECTOR

FILED
1991 JAN 31 PM 3:00
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TO: The Honorable Ken Hechler, Secretary of State
FROM: Richard Alker, Executive Director
DATE: January 30, 1991
SUBJECT: Private Gain 158-6

A comment period was held on the proposed rule, ending on September 14, 1990. No comments were received. Therefore, the proposed rule is filed for your review.

Enclosures

91.56
Bill Ethics, Private Gain 158-6

H. B. 4276

(By Delegate Grubb)

(Introduced January 27, 1992; referred to the
Committee on the Judiciary)

10 A BILL to amend article two, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto a new section, designated section
13 eight, relating to authorizing the ethics commission to
14 promulgate legislative rules relating to private gain.

15 Be it enacted by the Legislature of West Virginia:

16 That article two, chapter sixty-four of the code of West
17 Virginia, one thousand nine hundred thirty-one, as amended, be
18 amended by adding thereto a new section, designated section
19 eight, to read as follows:

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

22 §64-2-8. Ethics commission.

23 The legislative rules filed in the state register on the
24 thirty-first day of January, one thousand nine hundred ninety-

45

1 one, modified by the ethics Commission to meet the objections of
2 the legislative rule-making review committee and refiled in the
3 state register on the seventeenth day of December, one thousand
4 nine hundred ninety-one, relating to the ethics commission
5 (private gain), are authorized.

6

7 NOTE: The purpose of this bill is to authorize the Ethics
8 Commission to promulgate legislative rules relating to private
9 gain.

10

11 This section is new; therefore, strike-throughs and
12 underscoring have been omitted.