

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV Ethics Commission TITLE NUMBER: 158

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

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

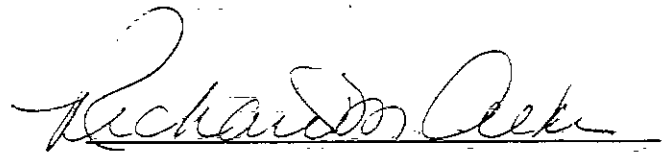
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: Private Gain

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Richard Alker, Executive Dir,

SERIES 6
PRIVATE GAIN

158-6-1 ~~PRIVATE-GAIN~~ General Provisions

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's 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~~ may make 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~~ is 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 public employer 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 accounting of bonus points or other promotional benefits accumulated through the use of ~~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 As used in this section, the term "nepotism" means ~~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~~ The public should be given 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 in the job an opportunity to make application.

b. ~~Involve an~~ An objective, independent third party should be involved 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, the public official or public employee should stay out of the selection process altogether. If you he or she is are one of several people with the authority to hire, ~~let the others with authority~~ should make the selection. If appropriate, ~~have the matter~~ should be handled by ~~your~~ his or her supervisor, or in the case of an elected official by a qualified person in another office.
2. If ~~you don't~~ a public official or public employee doesn't feel ~~you he or she~~ can, or should, totally avoid involvement in the decision, ~~you he or she~~ should at least have some independent person(s) take part in the selection. He or she should avoid ~~Avoid~~ using a subordinate for ~~this the~~ independent person.
3. If a public official or public employee ~~you~~ must share in the decision, he or she should exercise ~~your~~ his or her best objective judgment in making the selection, and be prepared to justify ~~your~~ his or her selection.

4.4 All hiring by public officials and public employees of relatives or close friends prior to October 1, 1989 ~~shall not be~~ is not 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~~ shall not use 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~~ shall not use 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~~ is 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~~ is 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's or public employee's governmental agency or as a result of his influence and control.

158-6-8 Bribes

It ~~shall be~~ is 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.~~

Full time appointed public officials and part-time and full-time public employees may not 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 own personal prestige, 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~~



WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator William R. Wooton, Co-Chair
Delegate David Grubb, Co-Chair

Debra A. Graham, Counsel
Michael McThomas, Associate Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

December 9, 1991

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Richard Alker
Executive Director
WV Ethics Commission
1207 Quarrier Street
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Private Gain

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.