

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

Form #6

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1992 APR 29 PM 1:19  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

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

TITLE OF RULE BEING PROPOSED: Private Gain

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB #1

SECTION 64-2-8(e), PASSED ON March 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: June 1, 1992

*R. Alker*

2.90

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 thirty-first day of October, one thousand  
4 nine hundred ninety-one, relating to the ethics commission  
5 (lobbying), are authorized, with the amendment set forth below:

Ad. 6 On page three, subsection 4.3, after the words "copies of  
7 forms" by inserting a period and striking out the remainder of  
8 the sentence.

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

Ad. 17 On page one, subsection 2.2, after the words "A public  
18 official" by inserting "acting in his or her capacity as a public  
19 official";

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

24 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";

Ad. 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 West Virginia 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:

Ad. 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,

Ad. 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 full-  
4 time public employees may not receive private compensation for  
5 performing private work during public work hours. This section  
6 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 ninety-  
9 one, modified by the ethics commission to meet the objections of  
10 the legislative rule-making review committee and refiled in the  
11 state register on the seventeenth day of December, one thousand  
12 nine hundred ninety-one, relating to the ethics commission  
13 (voting), are authorized, with the amendments set forth below:

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

16 And,

Ad. 17 On page one, after subsection 2.3, by adding a new  
18 subsection, designated subsection 2.4 to read as follows:

19 "2.4 In any case where a Senator or Delegate is voting as  
20 part of their official duties of office, the members of the  
21 Senate and the members of the House of Delegates are governed by  
22 the rules of their respective houses. The provisions of  
23 subsection 2.3 of this rule shall not apply to members of the  
24 Legislature when acting as a member thereof."

**SERIES 6  
PRIVATE GAIN**

**158-6-1 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 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 travel outside the State to attend seminars or inspect certain facilities or products on behalf of their governmental agency this 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 public employer or are reimbursed with tax 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 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 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. *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. *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 he or she is one of several people with the authority to hire, others with authority should make the selection. If appropriate, the matter should be handled by his or her supervisor, or in the case of an elected official by a qualified person in another office.
2. If a public official or public employee doesn't feel he or she can, or should, totally avoid involvement in the decision, he or she should at least have some independent person(s) take part in the selection. He or she should avoid using a subordinate for the independent person.
3. If a public official or public employee must share in the decision, he or she should exercise his or her best objective judgment in making the selection, and be prepared to justify his or her selection.

4.4 All hiring by public officials and public employees of relatives or close friends prior to October 1, 1989 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 or her 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 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 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 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 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 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**

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**

Certain public officials or public employees 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.