

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

**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 7

TITLE OF RULE BEING PROPOSED: Gifts

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(b), 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



2.70

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

Ad. 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 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 thirty-first day of October, one thousand
14 nine hundred ninety-one, relating to the ethics commission
15 (gifts), are authorized, with the amendments set forth below:

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

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

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

23 On page three, subsection 5.1, by striking out the word
24 "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 ninety-
15 one, modified by the ethics commission to meet the objections of
16 the legislative rule-making review committee and refiled in the
17 state register on the thirty-first day of October, one thousand
18 nine hundred ninety-one, relating to the ethics commission
19 (interest in public contracts), are authorized, with the
20 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 ninety-

SERIES 7
GIFTS

158-7-1 GIFTS General provisions

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

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

1.3 Filing Date --

1.4 Effective Date --

158-7-2 Honorarium

2.1 ~~Defined 1~~ For the purposes of this section, the term "honorarium" means payment given Payment made in recognition of published works, appearances, speeches and presentations which is not intended as consideration for the value of such services. ~~and which are not occupational or professional in nature.~~ These payments are not legally or traditionally required such as in an employment contract.

2.2 The Ethics Commission will use the The following guidelines ~~will be used~~ in determining whether the amount of an honorarium is reasonable and permitted under the Ethics Act WV Code §6B-2-5:

- a. the length of time spent on preparing or researching material for the presentation,
- b. the amount of time for actual presentation,
- c. the distance to be traveled to make the appearance, speech or presentation,
- d. the public official or public employee's experience, qualifications and educational background, and
- e. the usual and ~~customary~~ customary fee paid to others for similar work.

2.3 It ~~shall be~~ is unlawful for all elected public officials to accept an honorarium except as set out ~~below~~ in subsections 2.4 and 2.5 of this rule.

2.4 An elected public official ~~is not prohibited from~~ may accept accepting an honorarium if it is given for an appearance, speech or presentation made of a professional nature

not related to the official's public position. An example would be a ~~profession~~ professional such as a Physician, Certified Public Accountant, Pharmacist or Attorney speaking at a conference or seminar in his or her field.

2.5 An elected public official may receive an honorarium and donate it to a recognized charity or the State Treasury. Such public official must file notice with the Ethics Commission identifying the honorarium, the date received and the group it was donated to.

2.6 Any public employee who receives an honorarium ~~is required to~~ shall seek his or her supervisor's approval and take annual leave or leave without compensation from his public employment during the time he or she prepares for or makes such presentation, speech or appearance.

2.7 A public official or employee may not use public time, facilities, equipment or personnel in the preparation or presentation of a private presentation, speech or appearance.

158-7-3 Free Admission to Seminar/Conference

~~3.1 A public employee may receive free admission to attend a privately sponsored conference or seminar if the overall benefit is to assist in the performance of his or her public job responsibilities. Such activities enhance the accessibility by the public to State employees and are to be encouraged if compatible with the performance of the public official or public employees official duties.~~

~~3.2 A public employee may receive a reduced rate to attend a privately sponsored conference or seminar if the overall benefit is to assist in the performance of his or her public job responsibilities. Such activities enhance the accessibility by the public to State employees and are to be encouraged if compatible with the performance of the public official or public employees official duties.~~

3.1 A public official or public employee may accept a reduced rate for or free admission to a privately sponsored conference or seminar, if his or her attendance will result in significant benefit to the governmental agency he or she serves by enhancing his or her job related skills and the performance of his or her public job responsibilities.

158-7-4 Nominal Gifts

~~4.1 Defined For a gift to qualify as nominal and its acceptance be permitted by a public official or a public employee it must have a monetary value of \$20 or less.~~

For the purposes of this section "nominal" gift means a gift with a monetary value of \$20 or less. Some examples of nominal gifts include a T-shirt, hat, key chain, pen, pencil or any memento of that caliber.

4.2 Certain hotel benefits are considered part and parcel of the room package and are

not considered a "gift" to a public official or public employee. These are nominal benefits purchased with and incidental to the use of the hotel room such as, free parking and a free complementary daily newspaper.

~~4.3 — It is not unlawful for a public official or public employee who attends a conference, with the fee being paid by the State to receive a door prize having more than a nominal value. The public official or public employee shall remit the gift to the Treasurer of the State. Some examples of nominal gifts would be a T-shirt, hat, key chain, pencil or any memento of that caliber. A television set would not be nominal, nor would an expense paid trip to Hawaii.~~

158-7-5 Reasonable expenses for Panelist or Speaker

~~5.1 — When lodging expenses incurred by a public official or employee who is a speaker or panelist are greater than other hotels the Ethics Commission in determining reasonableness will look to see if the expenditures are limited to the usual and customary basic charges of the hotel for room and board. In determining reasonableness of the lodging charges for public officials or employees it must be the same as that afforded other hotel guests.~~

~~5.2 — It shall be unlawful for a public official or public employee who is a speaker or panelist to accept payment of or reimbursement for any costs incurred as a result of his participation in activities such as golf, carriage rides or health club services. A panelist or speaker who is a public official or a public employee is limited to receiving reasonable lodging and travel expenses.~~

~~5.3 — Public officials and public employees are permitted to accept gifts (such as free attendance at and payment of expenses at a conference or seminar) from persons who are not:~~

- ~~a. — conducting business with their governmental agency,~~
- ~~b. — engaged in any activity which is regulated or controlled by their agency,~~
- ~~c. — with a financial interest which may be affected by the performance of the public official or public employee's job responsibilities, or~~
- ~~d. — a lobbyist.~~

5.1 A public official or public employee may accept payment or reimbursement for reasonable expenses for food, travel and lodging incurred in attending a meeting at which he or she participates as a panel member or speaker, but it would be unlawful to accept payment or reimbursement for other expenses such as golf fees, carriage rides or health club fees.

5.2 The Ethics Commission will consider expenses for food and lodging "reasonable" if the expenses are limited to the usual and customary basic charges of the hotel and are

comparable to those charged other participants and hotel guests. The Ethics Commission will consider expenses for travel "reasonable", if the expenses are comparable to those ordinarily charged other similar travelers.

158-7-6 Solicitation of gifts

~~6.1~~ — ~~The Ethics Act only prohibits solicitation of certain gifts by public officials and public employees. There is no prohibition against third parties (non-covered persons under the Ethics Act) volunteering to solicit gifts or things of value to benefit a State Association, governmental agency or State employees.~~

~~6.2~~ 6.1 . Public officials and public employees may solicit gifts for a charitable purpose when there is no resulting direct pecuniary benefit to the public official or public employee or an immediate family member.

~~6.3~~ 6.2 . It shall be is unlawful for a public official or public employee to solicit any gift or donation (including those for a charitable purpose) from a subordinate employee.

158-7-7 Free Tickets

~~7.1~~ — ~~Sporting events~~ — It shall be unlawful for public officials and public employees to accept free admission or tickets to any sporting events from anyone who:

- ~~a. — is seeking to do business with their governmental agency,~~
- ~~b. — is engaged in activities which are regulated by their governmental agency,~~
- ~~e. — as a financial interest which may be affected by the performance of the public official's or public employee's official duties, or~~
- ~~d. — a lobbyist.~~

~~7.2~~ Public officials and public employees may accept free tickets or admission to cultural, political or charitable events from any of the four groups of individuals identified in ~~7.1 (a) (d) above.~~

The provisions of WV Code §6B-2-5 which state that a public official or public employee may accept free tickets or admission to those charitable, cultural or political events for which free tickets or admission are customarily extended as a courtesy to the office he or she holds, do not apply to sports events.

Bill Ethics, Gifts 158-1

H. B. 4275

(By Delegate Grubb)

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

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9
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 gifts.

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-

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 (gifts) are authorized.

6

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

9

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



KEN HECHLER
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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA 19 P12:58
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RECEIVED

TO: Lucy

AGENCY: Ethics Commission

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 15, 1992

THE ATTACHED RULE RECENTLY 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: 7 TITLE: 158 Ethics Commission

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: [Signature]

TITLE OF PERSON SIGNING: Ex. Dir.

DATE: Oct. 22 '92

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

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

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