

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #1

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2007 MAY -8 PM 1:43

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code 6B-2-5(c)

AMENDMENT TO AN EXISTING RULE: YES x NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

TITLE OF RULE BEING AMENDED: "Gifts" - Title being amended to read "Solicitation and Receipt of Gifts
and Charitable Contributions by Public Employees and Officials."

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: June 7, 2007 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: West Virginia Legislature
House of Delegates Chamber
State Capitol
Charleston, WV

* Please submit written comments by 5:00 p.m. on June 8th
COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH x
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

WV Ethics Commission

210 Brooks Street, Suite 300

Charleston, WV 25301

An Jay
Lewis D. Brown
Executive Director

Authorized Signature

#4.20

BRIEF SUMMARY OF PROPOSED RULE
Title 158, Series 7

The West Virginia Ethics Act, W.Va. Code § 6B-2-5(c) places limitations on the receipt and solicitation of gifts, including charitable gifts, by public officials. The Ethics Commission is also charged with interpreting the Ethics Act through the issuance of formal advisory opinions.

This rule attempts to incorporate the rules established by the Ethics Commission on the receipt and solicitation of gifts through its advisory opinions. In general, the rule: (1) clarifies the law as it relates to the receipt of honorarium; (2) further defines when public officials or employees may accept payment of expenses from interested third parties for their attendance at a conference or seminar, either as a participant or speaker; (3) sets forth guidance on soliciting for charity; (4) clarifies that the \$ 25.00 gift limitation is for a calendar year; and (5) further clarifies under what circumstances public officials and employees may accept a ticket to a charitable, cultural, political or sporting event.

The rule further incorporates the Commission's current ruling made in A.O. 2007-01 which limits the solicitation of gifts for charity by law enforcement officers and associations composed primarily of law enforcement officers. In addition to incorporating the limitations established by A.O. 2007-01 into the proposed rule, the rule also prohibits law enforcement officers or their associations from conducting telephonic or oral solicitations. The Commission proposes these additional limitations on law enforcement officials due to the unique authority of law enforcement officials, including the power to carry a firearm and to make arrests.

STATEMENT OF CIRCUMSTANCES
Title 158, Series 7

The West Virginia Ethics Act, W.Va. Code § 6B-2-5(c) places limitations on the receipt and solicitation of gifts, including charitable gifts, by public officials. The Ethics Commission is also charged with interpreting the Ethics Act through the issuance of formal advisory opinions.

Series 7 was enacted in 1992. It has not been amended since that time. The new rule incorporates the Commission's existing rules on gifts as established through its past advisory opinions. Further, the Commission recently established additional limitations on the solicitation of charitable gifts by law enforcement officers through the issuance of Advisory Opinion 2007-01. After the issuance of the opinion, the Commission decided that the limitations on solicitations by law enforcement officers should be incorporated into a Legislative rule in order that the law enforcement community, members of the public, and Members of the Legislature could formally participate in establishing a fair rule which balances the interests of the public and law enforcement community.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Gifts

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Ethics Commission

Address: 210 Brooks Street, Suite 300
Charleston, WV 25301

Phone Number: (304) 558-0664 Email: tkirk@wvadmin.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure
will have on costs and revenues of state government.

No fiscal impact is anticipated.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of
Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title:

Gifts

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Not applicable.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The rule attempts to further define limitations on the acceptance and solicitation of gifts by public officials and employees. The Ethics Commission has the responsibility of rendering advice on the meaning and application of the Ethics Act. If the rule is approved by the Legislature, while we anticipate an increased amount of inquiries about the application of the rule to particular circumstances, these inquiries may be fielded by existing Commission staff.

Date: May 8, 2007

Signature of Agency Head or Authorized Representative

Lewis D. Burns, Executive Director

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

FILED

2007 MAY -8 PM 1:44

SERIES 7

SOLICITATION AND RECEIPT OF GIFTS
AND CHARITABLE CONTRIBUTIONS BY PUBLIC EMPLOYEES AND OFFICIALS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§158-7-1. General.

1.1. Scope. -- ~~These legislative rules establish~~ This legislative rule establishes the rules governing the solicitation and receipt of the guidelines concerning gifts for by persons covered by the WV Governmental Ethics Act.

1.2. Authority. -- W. Va. Code § 6B-2-5(c).

1.3. Filing Date. -- ~~April 29, 1992.~~

1.4. Effective Date. -- ~~June 1, 1992.~~

§ 158-7-2. Honorarium.

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

2.2. The Ethics Commission will use the following guidelines in determining whether the amount of an honorarium is reasonable and permitted under W. Va. 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's or public employee's experience, qualifications and educational background, and
- e. the usual and customary fee paid to others for similar work.

2.3. ~~It is unlawful for all elected public officials to accept an honorarium except as set out in subsections 2.4 and 2.5 of this rule.~~ It is unlawful for a full-time elected official to receive an honorarium unless he or she:

- a. Donates it to a recognized charity or the State Treasury; and,
- b. Files a notice with the Ethics Commission identifying the honorarium, the date received and the group to whom it was donated.

2.4. ~~An A~~ A part-time elected public official may accept 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 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: 2.5. Any public employee who receives an honorarium shall seek his or her supervisor's approval and take annual leave or leave without compensation from his or her public employment during the time he or she prepares for or makes such presentation, speech or appearance.

2.7: 2.6. 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. Receipt of Free Admission, Travel and Lodging expenses to attend an educational-to Seminar/Conference Seminar or Conference.

3.1. A public official or public employee may accept from an interested third party a reduced rate for or free admission to a privately sponsored conference or seminar, and reimbursement for reasonable meals, travel and lodging expenses, if his or her attendance will result in 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 under each of the following:

- a. Attendance by the public official or employee must fulfill an existing agency need by significantly enhancing the attendee's occupational skill or knowledge to provide important information needed by the agency to meet its official mandate;
- b. The seminar or conference must be appropriate for the proposed attendee. A trip is appropriate for the attendee if he or she will use the information or job skill enhancement and is the person most suitable to acquire and transfer the skills or information to other appropriate agency personnel.
- c. The site of the proposed trip must be appropriate. A public employee or official may not accept payment for attendance at the seminar or conference and related costs if the same information is readily available locally.
- d. The seminar or conference must offer a reasonable return on the time spent. Attendance at the seminar or conference should represent a reasonable investment of the public official or employee's time when weighed against the information acquired or the degree of improvement in job skills or knowledge; and;
- e. The benefit to the agency must be significantly greater than the incidental benefit to the traveler.

3.2. Public employees and appointed public officials shall obtain permission before attending a privately sponsored conference or seminar for which a third party pays, in whole or part, their attendance fees, travel or lodging expenses. Permission to attend the seminar or conference and reimbursement for costs must be obtained in the following manner:

- a. A public employee must obtain permission to attend the seminar or conference from the head of his or her agency.

- b. An appointed public official must obtain permission from the governing body on which he or she serves or the public official to whom he or she reports.

3.3. Food and lodging expenses are "reasonable" if the expenses are limited to the usual and customary basic charges of the hotel and are comparable to those charged to other participants and hotel guests. Travel expenses are "reasonable" if the expenses are comparable to those ordinarily charged to other similar travelers.

3.4. A public official or public employee may not accept payment or reimbursement for other expenses such as golf fees, carriage rides or health club fees if the total value of the fees exceeds twenty-five dollars (\$25.00) unless these amenities are normally part of the standard hotel room charge and incidental to the use of the hotel room..

3.5. A public official or public employee may not accept payment from an interested third party for food, lodging or travel expenses for a guest. Provided, That, a public official or public employee may take a guest to a privately sponsored seminar if no additional costs are incurred by the third party payer for the guest's travel, lodging or attendance at the seminar.

§ 158-7-4. Nominal Gifts.

4.1. For the purposes of this section "nominal" gift means a gift with a monetary value of twenty-five dollars (\$25) or less. For purposes of the Ethics Act, W.Va. Code § 6B-2-5(c)(2)(B), a nominal gift is any gift with a monetary value of twenty-five dollars (\$25.00) or less. Some examples of nominal gifts include a T-shirt, hat, key chain, pen, pencil or any memento of that caliber. A public official or employee may accept from an interested party a nominal gift or gifts not exceeding twenty-five (\$25.00); Provided, That, the total dollar value of any nominal gift or gifts accepted from any one source may not exceed twenty-five (\$25.00) in one calendar year.

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.

§158-7-5. Reasonable Expenses for Panelist or Speaker.

5.1. A public official or public employee may accept payment or reimbursement for reasonable expenses for him or herself and for one guest 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 improper to may not~~ accept payment or reimbursement for other expenses such as golf fees, carriage rides or health club fees ~~unless such expenses are offered to all of the panelists or speakers unless these amenities are normally part of the standard hotel room charge and incidental to the use of the room.~~

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. Food and lodging expenses are "reasonable" if the expenses are limited to the usual and customary basic charges of the hotel and are comparable to those charged to other participants and hotel guests. Travel expenses are "reasonable" if the expenses are comparable to those ordinarily charged to other similar travelers.~~

§158-7-6. Solicitation of Gifts for Charity.

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.

6.2. The Ethics Commission may recognize programs or activities as involving a charitable purpose on a case-by-case basis.

6.3. It is improper for a public official or public employee to solicit any gift or donation, (including those for a charitable purpose), from a subordinate employee.

6.4. In soliciting a gift for charity in either their personal or official capacities, public officials and employees may use their titles.

6.5. A de minimis reasonable amount of public resources may be used for a charitable solicitation or fund raising drive that is conducted in furtherance of the West Virginia State Employees' Coordinated Campaign or a fund raising campaign officially approved by either the executive, legislative or judicial branch of State Government or the governing body of any local entity of a political subdivision.

6.6. State government agencies and the governing body of political subdivisions may provide a voluntary payroll deduction program to those employees who elect to contribute to the West Virginia State Employees Coordinated Campaign through payroll deduction.

6.7. State government agencies and the governing bodies of political subdivisions may solicit funds to support or underwrite agency programs which are statutorily created or authorized and are intended to help the poor and disadvantaged. If a state government agency or governing body of a political subdivision seeks to solicit funds for use by the agency for any other purpose, then the state government agency or governing body of a political subdivision must first seek permission from the Executive Director of the West Virginia Ethics Commission or the Ethics Commission through issuance of a formal advisory opinion. The Executive Director or Ethics Commission may only authorize such a solicitation if it serves a public purpose. This provision does not apply to the solicitation of donations by a member of the Legislature or a member of the Board of Public Works who is soliciting funds for a regional or national organization conference or other function in accordance with W.Va. Code § 6B-2-5(c)(6) and § 6B-2-5(c)(7).

6.8. An association of public officials or employees is bound by the same ethical standards that apply to its constituent members.

6.9. Fund-raising activities based on an exchange of value, such as car washes or the sale of baked goods, not gift solicitations.

§ 158-7-7. Manner of Solicitation and Use of Funds.

7.1. Public officials, public employees and agencies who regulate individuals or businesses may not orally solicit donations from:

a. Persons under the regulatory control of the agency. A person is under the regulatory control of the public official, employee or agency if the person has a matter pending before the agency or had a matter pending within the past 12 months;

b. A vendor which has a contract with the agency or is bidding on a contract or is in the process of soliciting business from the agency.

7.2. A written solicitation to the public or business community at large, even if the targeted group may encompass regulated persons or vendors, is permissible; Provided, that, the written

solicitation may not be directed solely to persons under the regulatory authority of, or vendors, of the public official, employee or agency.

7.3. Solicitations should be conducted, and acknowledgments made, in a fair and evenhanded manner. Each solicitation should contain a statement setting forth that donations are purely voluntary.

7.4 Under no circumstances should anyone soliciting a contribution for a charitable purpose state or infer that contributors will receive some special treatment from a government agency or its employees, or any other sort of quid pro quo as a consequence of making a donation.

7.5. If public officials or employees solicit donations, or lend their name to a fund-raising activity, the donations or proceeds may not be used for:

a.. The direct benefit of the public officials, employees or their immediate families, including college scholarship funds; Provided, That, revenues generated may be used for charitable purposes from which the public officials, employees or their families benefit no more than the public at large.

b. To finance the operation of an association of public officials or employees through the payment of expenses for salaries for its officers, office space, and other related expenses.

c. To pay for lobbying expenses, including fees for professional lobbyists, to lobby for a pay increase or increased health or pension benefits for the public officials or employees; Provided, That, these expenditures may be paid with monies derived from dues or funds which have not been solicited from citizens or businesses.

7.6. Any association of public officials who solicits donations must keep a separate accounting of monies raised through charitable solicitation and the purposes for which the monies are used.

§ 158-7-8. Solicitation of gifts for charities by law enforcement officers.

8.1. The Ethics Commission finds that the interest of the public are served by having stricter limitations which govern solicitations by law enforcement officers due to the unique nature of the authority which law enforcement officers exercise over the public, including arrest powers.

8.2. Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof.

8.3. Law enforcement officers may not solicit for charity while in uniform, but may show identification upon request.

8.4. Public officials, employees or members of an association of law enforcement officers may solicit donations for charity while out of uniform and when they are off duty.

8.4. Law enforcement officers or associations composed of law enforcement officers may not provide signs, stickers, decals or other items of display by individual donors showing whether or not a donation has been made on account of any charitable contribution solicited on behalf of law enforcement officers or their association; Provided, That, certificates, plaques or other

items of display which are not intended for display on motor vehicles may be distributed to donors.

8.5. Law enforcement officers or associations composed of law enforcement officers may not conduct telephonic or oral solicitations.

8.6. Law enforcement officers may not pick up a donation while in uniform.

8.7. Law enforcement officers may wear their uniforms while participating in fund-raising activities based on an exchange of value such as a sale of baked goods or a car wash;

8.8. Law enforcement officers may deliver proceeds raised for charity to the intended recipient while in uniform and while on duty.

~~§158-7-7:~~ § 158-7-9. Free Tickets.

9.1. ~~The provisions of W. Va. 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 of the office he or she holds do not apply to sports events. Provided, That public officials and public employees may accept complimentary tickets to sporting events, if the tickets are incidental to the conduct of their official or ceremonial duties. 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; Provided, That, the tickets are given by a sponsor of the event, not a third party who has purchased tickets from an event sponsor. The \$25.00 monetary limitation does not apply to tickets accepted for these events.~~

9.2. A public official or employee may accept a ticket for him or herself and a ticket for one guest to a charitable, cultural or political event to which is otherwise permissible under this section and the Ethics Act the public official is otherwise permitted to accept a ticket in accordance with this section.

9.2. 9.3. A public official or public employee may not accept a ticket, ~~do not apply to any~~ sporting events, when the value of the ticket exceeds \$25.00 unless the public official or employee has an official or ceremonial duty to perform at the sporting event, ~~the tickets are incidental to the conduct of their official or ceremonial duties.~~ A ceremonial duty is any duty performed before members of the public who are attending the sporting event. If the public official does not have a ceremonial duty, then the value of a ticket or tickets received from an interested party may not exceed \$25.00 in one calendar year.

9.4. A public official or employee may accept an additional ticket for a guest to a sporting event if he or she has a ceremonial role. If the public employee or official does not have a ceremonial role, then he or she may accept a free ticket for him or herself and one guest only if the combined value of both tickets does not exceed \$25.00.