

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

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SECRETARY OF STATE

Form #6

**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: 7

TITLE OF RULE BEING AMENDED: Solicitation and Receipt of Gifts and Charitable
Contributions by Public Employees and Officials

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

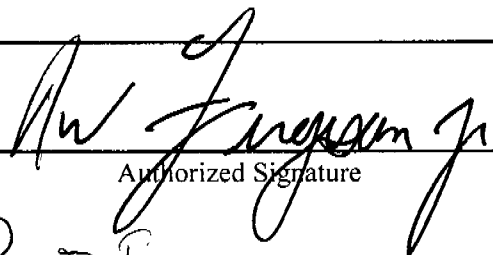
TITLE OF RULE BEING PROPOSED: _____

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

AUTHORIZATION IS CITED IN (house or senate bill number) H. B. 4209

SECTION § 64-9-3, PASSED ON March 8, 2008

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: July 1, 2008


Authorized Signature
Lewin D. Pinner
Executive Director

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

2008 APR 25 AM 11:33

SERIES 7
SOLICITATION AND RECEIPT OF GIFTS
AND CHARITABLE CONTRIBUTIONS BY PUBLIC EMPLOYEES AND OFFICIALS

LEGISLATIVE SERVICE
COMMISSION
WEST VIRGINIA
LEGISLATIVE SERVICE
COMMISSION
WEST VIRGINIA

§ 158-7-1. General.

1.1. Scope. - - This legislative rule establishes the rules governing the solicitation and receipt of gifts by persons covered by the WV Governmental Ethics Act.

1.2. Authority. - - W. Va. Code § 6B-2-2(a), § 6B-2-5(b), § 6B-2-5(c) and, § 6B-2-5(o).

1.3. Filing Date. -- April 25, 2008

1.4. Effective Date. -- July 1, 2008

§ 158-7-2. Honorarium.

2.1. For the purpose 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 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. 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 Physician, Certified Public Accountant, Pharmacist or Attorney speaking at a conference or seminar in his or her field.

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

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 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 An interested third party is any person whom the official or employee knows or has reason to know:

a. Is doing or seeking to do business of any kind with his or her agency;

b. Is engaged in activities which are regulated or controlled by his or her agency; or,

c. Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

3.3. Public employees and appointed public officials shall obtain permission before attending a privately sponsored conference or seminar for which an interested 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.

3.4. 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 the those ordinarily charged to other similar travelers.

3.5. 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.

3.6. 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 purposes of the Ethics Act, W.Va. Code § 6B-2-5(c) (2)(C), 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 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 may not accept payment or reimbursement for other expenses such as golf fees, carriage rides or health club fees unless these amenities are normally part of the standard hotel room charge and incidental to the use of the room.

5.2. 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; Provided, That law enforcement officers are subject to the limitations in section 8.

6.5. A 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 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. Fund-raising activities based on an exchange of value are not gift solicitations and are permissible.

6.9. Raising funds for public employees seriously injured or killed while in the line of duty, and their affected family member, constitutes a charitable activity for purposes of the Ethics Act.

§ 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. This subsection does not apply to purely law enforcement agencies, officials or employees who do not actually regulate or exercise regulatory control over other persons but merely enforce existing laws and rules as to all applicable persons;

b. A vendor which has a contract with the agency, 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. This subsection does not apply to purely law enforcement agencies, officials or employees who do not actually regulate or exercise regulatory control over other persons but merely enforce existing laws and rules as to all applicable persons.

7.3. Solicitations should be conducted, and acknowledgments made, in a fair and even-handed 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 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.

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

8.1. The Ethics Commission finds that the interest of the public is 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. Except as otherwise provided for in these rules, law enforcement officers may not solicit for charity while in uniform, but may show identification upon request.

8.4. Public officials or employees may solicit donations for charity while out of uniform and when they are off duty.

8.5. 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, unless such signs, stickers, decals or other items of display contain the following disclaimer: 'The holder of this item is not entitled to any special treatment.'; Provided, That, certificates, plaques or other items of display which are not intended for display on motor vehicles may be distributed to donors without the inclusion of any such disclaimer; Provided, However, That an association may provide to its members who are currently serving as law enforcement officers, or who previously served as law enforcement officers, a sign, sticker, decal or other item of display, including those items intended for display

in a motor vehicle, which demonstrate that a present or former law enforcement officer is a member of an association or fraternal group primarily composed of law enforcement officers, without the inclusion of any such disclaimer.

8.6. Law enforcement officers or associations composed of law enforcement officers may conduct telephonic or oral solicitations in their official capacity; Provided, That, when conducting a telephonic solicitation, law enforcement officers may not identify themselves by rank or title or otherwise reference their rank or title during the conversation unless specifically requested by the person with whom they are having a conversation.

8.7. Law enforcement officers may not pick up a donation while in uniform except as otherwise provided for in these rules.

8.8. Law enforcement officers may wear their uniforms while participating in fund-raising activities based on an exchange of value. Further, they may wear their uniforms while participating in a fund-raising event such as a motorcycle ride, walk or other activities where the public, for a fee or donation, is invited to join a law enforcement officer as part of a fund-raising activity for charity.

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

§ 158-7-9. Free Tickets.

9.1. 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 an official 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 the public official is otherwise permitted to accept a ticket in accordance with this section.

9.3. A public official or public employee may not accept a ticket to a sporting event 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. 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 for a sporting event or events 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.