

Form #6

WILLIAM H. BROWN, JR.
CHIEF OF POLICE

Don. Allen

250

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
Ad. 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 8
INTEREST IN PUBLIC CONTRACTS

158-8-1 ~~INTEREST IN PUBLIC CONTRACTS~~ General

1.1 Scope -- These legislative rules establish the guidelines concerning interest in public contracts for persons covered by the WV Governmental Ethics Act.

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

1.3 Filing Date --

1.4 Effective Date --

158-8-2 Direct Authority and Control

~~2.1 Definition A public employee or a public official has direct authority or control when he or she has the power to decide, or has influence over the awarding of a public contract.~~

2.2 Examples of individuals with direct authority and control over the ~~letting~~ awarding of public contracts ~~would~~ include all elected or appointed public officials in the executive branch of City, County and State government, superintendents, assistant superintendents, purchasing directors, County Commissioners, County Board members and City managers.

158-8-3 Limited Interest

~~3.1 It shall be unlawful for a public official or a public employee to have more than a limited interest in the profits or benefits of a public contract when he may have direct authority or control over the letting of that particular public contract.~~

~~3.2 Definition Limited interest is defined as a) being less than a \$30,000 interest in the profits or benefits of the contract that the public official or public employee will personally receive in a one year time period, and b) a public official or a public employee having less than a 10% interest in the business.~~

A "limited interest" means an interest of a person as an owner, shareholder or creditor of a business which is the contractor on a public contract when:

a. as an owner or shareholder the interest does not exceed ten percent of the partnership or outstanding shares of a corporation, and does not exceed thirty thousand dollars in the profits or benefits of the public contract, or

b. as a creditor the interest does not exceed ten percent of the total indebtedness of the business and does not exceed thirty thousand dollars in the profits or benefits of the public contract.

A person can have a "limited interest" only as (1) the owner of an interest of ten percent or less in a business or as (2) a creditor with a claim amounting to ten percent or less of a business' total indebtedness.

158-8-4 Public Contract

~~The prohibitions against having more than a limited interest in the profits or benefits of a contract pertain only to~~ The prohibition of WV Code §6B-2-5(d) against being a party to or having an interest in the profits or benefits of a contract pertains only to public contracts involving a governmental body or agency.

158-8-5 Business Associations

~~5.1 — A public official or public employee is not considered to be associated with a business when such official or employee is merely an employee of the business with no ownership interest.~~

~~5.2 — A public official or public employee is not considered to be associated with a business when such official or employee is only a member of the Board of Directors, and has no ownership interest in the business.~~

A public official or public employee is considered to be "associated" with a business when he or she has an interest as an owner or creditor. An **employee or member of corporation's board of directors**, lacking an interest as owner or creditor, is not "associated" with the business.

158-8-6 Part-time appointed public official -recusal

6.1 ~~It is not unlawful for a part time appointed public official to enter into a public contract over which he may have control or direct authority to enter into, however the public official must recuse himself from deciding, excuse himself from voting and disclose the full amount of his interest in the public contract.~~ For the purposes of WV Code §6B-2-5(d), The Ethics Commission will consider a person "recused" if he or she (1) has made a full disclosure of his or her interest in the public contract, (2) has refrained from discussing, voting on or otherwise influencing or deciding the matter and (3) is absent from the room during the discussion and voting process.

6.2 ~~Definition — Recusal is defined as refraining from participating in the discussion process or deciding a matter. The Ethics Commission has determined that in order to have a legitimate recusal the appointed part-time public official must physically remove himself from the room during the discussion and voting process.~~

6.3 ~~Definition —~~ Making a full disclosure of one's interest ~~is defined as~~ means making a prior public disclosure complete in every particular, ~~and including~~ the exact amount of interest held directly or indirectly by a public employee or public official in a public contract.

158-8-7 Legislator's Contracting

It shall not be unlawful for a A member of the Legislature or the Legislator's immediate family or a business the Legislator is associated with to may contract with any state Governmental agency body.

~~158-8-8 Immunity from prosecution~~

~~8.1 All part time appointed public officials holding county offices, who follow the recusal procedure established in 158-8-6 will be afforded immunity from prosecution of or the sanctions in West Virginia Code Section 61-10-15.~~

~~8.2 Any County official or employee who in good faith relies on an advisory opinion where the facts are similar to his or hers will be afforded immunity from prosecution for violations of the WV Ethics Act as well as the sanctions contained in WV code 61-10-15.~~

6/10/92

Bill Ethics, Public Contr- 158-8

H. B. 4272

(By Delegate Grubb)

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

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 interests in public
15 contracts.

16 Be it enacted by the Legislature of West Virginia:

17 That article two, chapter sixty-four of the code of West
18 Virginia, one thousand nine hundred thirty-one, as amended, be
19 amended by adding thereto a new section, designated section
20 eight, to read as follows:

21 ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO
22 PROMULGATE LEGISLATIVE RULES.

23 §64-2-8. Ethics commission.

1 The legislative rules filed in the state register on the
2 thirty-first day of January, one thousand nine hundred ninety-
3 one, modified by the ethics commission to meet the objections of
4 the legislative rule-making review committee and refiled in the
5 state register on the thirty-first day of October, one thousand
6 nine hundred ninety-one, relating to the ethics commission
7 (interest in public contracts) are authorized.

8

9 NOTE: The purpose of this bill is to authorize the Ethics
10 Commission to promulgate legislative rules relating to interests
11 in public contracts.

12

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

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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SECRETARY OF STATE

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WV ETHICS COMMISSION

OCT 19 12:58

RECEIVED

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

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: 8 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.