

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Depr. of Admn., WV Ethics Commission TITLE NUMBER: 158

RULE TYPE: Legislative; CITE AUTHORITY WV Code 6B-2-5(h)

AMENDMENT TO AN EXISTING RULE: YES 7 NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 158-11

TITLE OF RULE BEING PROPOSED: Employment

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON Sept. 14, 1990 AT 4:30 p.m.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

West Virginia Ethics Commission

attn: Rick Alker

1207 Quarrier St.

Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Carol Per

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

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SUMMARY

158-11 EMPLOYMENT

These legislative rules establish the guidelines concerning employment for persons covered by the WV Governmental Ethics Act.

SERIES 11

158-11-1 EMPLOYMENT

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

1.2 Authority -- WV Code 6B-2-5(h)

1.3 Filing Date --

1.4 Effective Date --

158-11-2 General

2.1 Full-time public employees and officials may not seek employment with or be employed by a person that is or may be regulated by the governmental agency with which they are employed. This prohibition applies only to those employees who exercise policymaking, nonministerial or regulatory authority.

2.2 The prohibition exists only so long as an employee or official is employed by the regulating agency. Such a person is relieved from the prohibition immediately upon terminating his or her employment with the regulating agency. There is no waiting period.

2.3 No regulated person shall offer employment to a full-time employee or official of the regulating agency during their employment with the agency.

2.4 The prohibition does not apply to the activities of employees and officials for or on behalf of charitable or not for profit public service entities from which they derive no pecuniary benefit.

158-11-3 Definitions

3.1 "Seek employment" Any contact with a regulated person, directly or through an intermediary, relating to the availability or conditions of employment in furtherance of obtaining employment. Responding to unsolicited inquires from a regulated person concerning employment would also constitute seeking employment.

3.2 "Offer employment" Any contact by a regulated person with a full-time employee or official of a regulating governmental agency, directly or through an intermediary, relating to employment constitutes "offering employment".

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3.3 "May be regulated" A person is one who "may be regulated" if there is a reasonable probability that the person will be regulated. There must be a showing that the person's activities are of the nature and extent ordinarily regulated by the governmental agency.

158-11-4 Requests for Exemptions

4.1 Exemptions will not be granted for secondary employment [moonlighting] with regulated persons.

4.2 Persons requesting exemptions will be advised that exemptions are granted only upon condition that exempted persons give prior written notice to both their immediate supervisor and the Ethics Commission of the names and addresses of all regulated persons with whom they seek employment.

4.3 The Commission shall maintain a record of those persons granted exemptions and the names and addresses of the regulated persons with whom they seek employment. These records will be available for public examination.

4.4 An application for exemption shall contain the following information:

- a. the name, address and phone number of the governmental agency by which the requestor is employed
- b. the requestor's job title and the name of his or her immediate supervisor
- c. "facts" sufficient to support a finding that the prohibition deprives the requestor of "the ability to earn a livelihood in this state outside of the governmental agency"
- d. the names of the regulated persons with whom the requestor expects to seek employment
- e. a copy of the requestor's job description
- f. a copy of the requestor's resume, if he or she has one prepared.

4.5 If an exemption is granted, the Commission shall notify both the requestor and his or her supervisor. If the Commission denies an exemption request, only the requestor shall be notified.

4.6 Exempted persons are responsible for notifying the Commission of their intention to seek employment with any regulated person. Notice shall be given on disclosure forms provided by the Commission prior to seeking employment with the regulated person.

4.7 Disclosure forms are to be filed out and signed by the exempted person, acknowledged by his or her supervisor and returned to the Commission. The acknowledgement by the exempted person's supervisor serves as notice to the supervisor that he or she is responsible to limit, to the fullest extent possible, the exempted person's official action on any matter relating to a person with whom the exempted person is seeking employment.

4.8 It is the responsibility of the exempted person's supervisor to insure that:

- a. the exempted person takes no official action on a matter which will have a direct effect on the financial interest of a person with whom the exempted person is seeking employment, or, if that is not possible,
- b. the official action of the exempted person be subjected to additional review by the supervisor.

4.9 It is a violation of the Act for any person granted an exemption to take any official action on a matter which will have a direct effect on the financial interest of a person with whom he or she is seeking employment. If the exempted person has sought and been denied the authorization of his or her supervisor to avoid such action there is no violation.