

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

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REPORT OF THE

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: 11

TITLE OF RULE BEING PROPOSED: Employment

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(g), 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

Rev. Allen

2.50

Ad 1 (g) 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 seventeenth day of December, one thousand
6 nine hundred ninety-one, relating to the ethics commission
7 (employment), are authorized, with the amendments set forth
8 below:

9 On page two, subsection 3.3, by striking out the words "if
10 there is a reasonable probability that the person will be
11 regulated. There must be" and inserting in lieu thereof "upon";

12 On page two, subdivision 4.2.c, after the word "prohibition"
13 by inserting the words "for all practical purposes";

14 On page three, by striking out all of subsections 4.5, 4.6
15 and 4.7;

16 And,

17 On page three, by renumbering the remaining subsections.

18 ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND
19 ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE
20 RULES.

21 §64-3-2. Division of banking.

22 (a) The legislative rules filed in the state register on the
23 eleventh day of June, one thousand nine hundred eighty-two,
24 relating to commissioner of banking (communication terminals and
25 interchange systems), are authorized.

SERIES 11 EMPLOYMENT

158-11-1 General Provisions

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 Prohibitions

2.1 a. For the purpose of this section "employment" does not include 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.

b. 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.

c. 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.

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

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 also constitutes 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".

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 Persons requesting exemptions will be advised that exemptions are granted **only** upon condition that exempted persons not act or fail to take action in a matter affecting a person with whom they are seeking employment.

4.2 An application for exemption shall contain the following information:

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

4.3 When an exempted person sees that he or she may be required to take official action in regard to a matter affecting a person with whom he or she is seeking employment, he or she is responsible for notifying his or her supervisor of the exemption and seeking to be relieved from further action in regard to such person.

4.4 Once informed that a subordinate has received an exemption, it is the responsibility of the exempted person's supervisor to insure that:

- a. the exempted subordinate takes no action in regard to persons with whom the exempted subordinate is seeking employment, or, if that is not possible,

- b. the official action of the exempted subordinate is subject to additional review by the supervisor.

4.5 Exempted persons are responsible to notify the Ethics Commission if they are required by their supervisors to take official action on matters relating to persons with whom they are seeking employment.

4.6 The Commission will contact supervisors who have been identified pursuant to subsection 4.5 of this rule and advise them of their responsibility to closely supervise the work of their exempted subordinates in regard to persons with whom they are seeking employment.

4.7 It is a violation of WV Code §6B-2-5 for any person granted an exemption to take any official action in regard to persons 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, and has notified the Commission as provided in subsection 4.5 of this rule there is no violation of the law.

4.8 The power to grant exemptions pursuant to this rule is hereby delegated to the Commission Chairman and the Commission's Executive Director and either is authorized to grant such exemptions in the name of the Commission as provided by this rule.

4.9 Requests for exemptions will be decided within ten working days after being received by the Commission, unless additional information is required by the Commission, in which event the request will be decided within five working days after the Commission has received the necessary information.

4.10 Exemptions granted by the Commission Chairman and the Commission's Executive Director pursuant to this rule are for a period of thirty days. Within that thirty day period the exemption will be submitted to the Commission for ratification.

4.11 Persons granted exemptions by the Commission Chairman or the Commission's Executive Director will be notified of the Commission's decision on ratification within ten days of the decision.

4.12 Exemptions ratified by the Commission, or granted by it in the first instance, are subject to no time limit.

4.13 The Commission shall maintain a record of those persons granted exemptions and, where applicable, the names of those persons with whom they seek employment and in regard to whom they have been required by their supervisors to take official action. These records are public records and are available for public examination and copying.

8257

Bill Ethics, Employment 158-11

H. B. 4278

(By Delegate Grubb)

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

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to authorizing the ethics commission to promulgate legislative rules relating to employment.

Be it enacted by the Legislature of West Virginia:

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

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

§64-2-8. Ethics commission.

The legislative rules filed in the state register on the thirty-first day of January, one thousand nine hundred ninety-

4278

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 seventeenth day of December, one thousand
4 nine hundred ninety-one, relating to the ethics commission
5 (employment), are authorized.

6

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

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

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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SECRETARY OF STATE

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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: 11 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.