

OCTOBER 2



AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

October 2, 1991
6:00p.m. - 8:00p.m.

Senate Finance Committee Room 451

1. Approval of Minutes - Meetings August 29 & 30, 1991 and September 10, 1991
2. Review of Legislative Rules:
 - a. Ethics Commission, WV, Dept. of Admr. - Private Gain, Series 6
 - b. Ethics Commission, WV, Dept. of Admr. - Gifts, Series 7
 - c. Ethics Commission, WV, Dept. of Admr. - Voting, Series 9
 - d. Ethics Commission, WV, Dept. of Admr. - Employment, Series 11
 - e. Natural Resources Division of - Boating Regulations
 - f. Public Safety, Division of - Carrying of Handguns by Retired or Medically Discharged Members
 - g. Public Safety, Division of - Contracted Police or Security Services
 - h. Health Care Cost Review Authority - Certificate of Need
 - i. Health Care Cost Review Authority - Exemption for Shared Services
 - j. Health Care Cost Review Authority - Health Services Offered by Health Professionals
 - k. Health Care Cost Review Authority - Financial Disclosure Rule
 - l. Counseling, Board of Examiners in - Licensing Rules
 - m. WV Real Estate Appraiser Licensing and Certification Board - Rules and Regulations of the West Virginia Real Estate Appraiser Licensing and Certification Board, Series 1

- n. WV Real Estate Appraiser Licensing and Certification Board - Requirements of Licensure and Certification, Series 2
- o. WV Real Estate Appraiser Licensing and Certification Board - Renewal of Licensure or Certification, Series 3

3. Other business:

Wednesday, October 2, 1991

6:00 - 8:00 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Keith Burdette
ex officio nonvoting member

Robert "Chuck" Chambers,
ex officio nonvoting member

Senate

House

Wooton, Chairman
Chafin
Manchin, J.
Tomblin (absent)
Wiedebusch (absent)
Boley

Grubb, Chairman
Burk
Faircloth
Roop
Love
Gallagher

The meeting was called to order by Mr. Grubb, Co-Chairman.

The minutes of the August 29, August 30 and September 10, 1991 meetings were approved.

Mr. Grubb requested that Richard Alker, Executive Director of the Ethics Commission, address the Committee regarding the Commission's response to questions raised at the Committee's August 29, 1991, meeting regarding the rules proposed by the Ethics Commission, Private Gain, Gifts, Voting and Employment.

Following his presentation, Mr. Alker answered questions from the Committee.

Mr. Wooton moved that the rules proposed by the Ethics Commission, Private Gain, Voting and Employment, lie over until the Committee's December meeting. The motion was adopted.

Mr. Wooton moved that the rule proposed by the Ethics Commission, Gifts, be approved as modified. The motion was adopted.

Debra Graham, Committee Counsel, explained that the rule proposed by the Division of Natural Resources, Boating Regulations, had been laid over at the Committee's August 30, 1991, meeting to allow the Division the opportunity to review comments from Leff Moore and to propose modifications to the proposed rule. Major Bill Daniel, representing the Division, answered questions from the Committee and distributed a proposed modification to Subsection 6.10. of the proposed rule.

Mr. Manchin moved that the proposed rule lie over until the Committee's next meeting.

Mr. Gallagher moved to amend Mr. Manchin's motion to include a request that the Division establish the same rules regarding age limits and supervision for both watercraft and personal watercraft and

that the Division look at the possibility of developing an examination and license for operating all types of watercraft. Mr. Gallagher's amendment to Mr. Manchin's motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Public Safety, Carrying of Handguns by Retired or Medically Discharged Members. She stated that the Division had agreed to technical modifications. Trooper First Class C. R. Blankenship answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Division of Public Safety, Contracted Police or Security Services, and stated that the Division had agreed to technical modifications. TFC Blankenship answered questions from the Committee.

Mr. Love moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Health Care Cost Review Authority, Certificate of Need, and told the Committee that the Authority had agreed to technical modifications. Larry Fizer, Chairman, reviewed the proposed rule and answered questions from the Committee. Bob Whitler, West Virginia Hospital Association, also responded to questions from the Committee.

Mr. Burk moved to modify Section 6.1 of the proposed rule to reduce from 5 to 3 years the period for which a hospital must file a long range plan. The motion was adopted.

Mr. Gallagher moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Health Care Cost Review Authority, Exemption for Shared Services, and stated that the Authority had agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Roop raised a point of order as to the absence of a quorum. Mr. Grubb stated that the point was well taken and noted the absence of a quorum.

Due to the absence of a quorum, the meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: October 2, 1991

TIME: 6:00 pm

NAME

Present	Absent	Yeas	Nays
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
	✓		
✓			
	✓		

Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Brian A. Gallagher

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Boley, Donna

Wiedebusch, Larry

TOTAL

RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review

DATE: October 2, 1991

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
<u>Please print or write plainly</u>			
Robert Lamant	1407 QUARRIES St CHARLESTON	ETHICS COMMISSION	
Bill Mullett	1330 Monmouth Dr Chas	WV Bd Exam Counseling	
John M. Panza	963 Colman Dr Fairmont, W.V.	W.U.A. Bd Exam Counseling	
MICHAEL E CONNER	State Capitol Camp. Bldg 3 Rm 712	DNR	IF NEEDED.
Barbara Smith	Hickory Centre, Chas.	Agriculture	
BILL DANIEL	Chas	DNR LAW	IF NEEDED
LEPP MOORE	XIV Reclamation Dept Area	Nitro. WV	" "
JOHN MONTGOMERY	214 BROOKHAVEN DR. NITRO, WV	---	ETHICS RULE ON EMPLOYMENT
Capt D. A. Egnov	So Chas	DPS	
TFC C. R. Blankenship	So Chas	DPS	IF needed
Marianne Stonestreet	100 Dee Drive	HCCRA	if needed
Bob Whittier	Charleston	West Virginia Hospital Assoc.	

*Handout Oct 2, 1991
By R. Aiker - Ethics Com.*

VOTING

158-9-2.2 For the purposes of this section a matter will be considered "personal" to a public official or public employee when he or she has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his or her vote or would clearly give the appearance of impropriety. An interest is not "personal" if the interest of the public official or public employee in the matter is affected as a member of, and to no greater extent than any other member of, a profession, occupation or group.

WEST VIRGINIA LEGISLATIVE REGULATIONS
ETHICS COMMISSION
TITLE 158
SERIES 11
1991

RECEIVED

SEP 06 1991

Legislative Rule Making
Review Committee

EMPLOYMENT

§ 158-11-1. General.

1.1 **Scope.** - These legislative rules establish guidelines for and explain and clarify the limitations placed upon public officials and public employees seeking employment outside government.

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

1.3 **Filing date.** -

1.4 **Effective date.** -

§ 158-11-2. **Definitions.** - As used in this rule and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular and in the plural.

2.1 "Administration" means the practical management and direction of the executive department, or of the public machinery or functions, or of the operations of the various organizations or agencies. It includes the direction or oversight of any office, service or employment.

2.2 "Commission" means the West Virginia Ethics Commission.

2.3 "Employee" means any person in the service of another under any contract of hire, whether express or implied, oral or written, where the employer or an agent of the employer or a public official has the right or power to control and direct such person in the material details of how work is to be performed and who is not responsible for the making of policy nor for recommending official action.

2.4 "Employment" means the provision of services to another for pay and includes professional services and other services whether rendered as an employee or as an independent contractor, but 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.

2.5 "May regulate" or "may be regulated" means that there is a reasonable probability that the person will be regulated by the public employees' or public officials' agency during the time such employee or official is employed by the agency, while such employee or official is seeking employment outside of government, or within the six months immediately succeeding the date when such employee or official is employed by the person.

2.6 "Ministerial functions" means actions or functions performed by an individual under a given state of facts in a prescribed manner in accordance with a mandate of legal authority, without regard to, or without the exercise of, such individual's own judgment as to the propriety of the action being taken.

2.7 "Nonministerial" means actions or functions which are not ministerial actions or functions, which require individual judgment and discretion as to the course of the actions or functions to be performed, which occur in accordance with legal authority and which, but for appeal to a governmental body outside of the agency taking the action or performing the function, are final in nature.

2.8 "Nonministerial authority" means the power of a public official or public employee authorized by law to accomplish nonministerial functions or actions.

2.9 "Offer employment" means contact by a regulated person with a full-time public employee or public official, such contact being either direct or through an intermediary, and relating to the employment outside of government of such employee or official by such regulated person; **Provided**, That merely inquiring as to whether a public official or public employee is interested in a specific position and, if so, requiring the official or employee to seek any required exemption prior to further contact shall not be deemed to be an "offer employment."

2.10 "Person" means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons, irrespective of the denomination given such organization or group.

2.11 "Policy" means a general or specific principle in accordance with which a governmental body, or agency thereof, manages the public affairs for which it is responsible.

2.12 "Policymaking" means the actions by which a governmental body, or agency thereof, establishes policy.

2.13 "Policymaking authority" means the power of a public official or public employee authorized by law to establish policy for a governmental body, or agency thereof.

2.14 "Public employee" means any full-time or part-time employee of any governmental body, or any political subdivision thereof, including county school boards.

2.15 "Public official" means any person who is elected or appointed and who is responsible for the making of policy or who takes official action which is either ministerial or nonministerial, or both, with respect to:

2.15.1 contracting for, or procurement of, goods or services;

2.15.2 administering or monitoring grants or subsidies;

2.15.3 planning or zoning;

2.15.4 inspecting, licensing, regulating or auditing any person; or

2.15.5 any other activity where the official action has an economic impact of greater than a *de minimis* nature on the interest or interests of any person.

2.16 "Regulate" means the exercise of a power over a person by which such persons' activities are directly controlled.

2.16.1 Example. - Activities such as the administration of tax laws or the administration of laws relating to the registration of corporations are not included in the term "regulate" because they do not go to controlling the person's activities.

2.16.2 Example. - A Department of Natural Resources Water Quality Inspector "regulates" the pollutant discharge of a particular company.

2.16.3 Example. - A Department of Energy Inspector "regulates" the surface disturbance activities of a coal operator.

2.16.4 Example. - The Commissioner of an agency sets policy and "regulates" a particular activity such as hazardous waste disposal, state parks, surface mine operations, etc.

2.17 "Regulated person" means a person whose activities a government agency regulates.

2.17.1 Merely being licensed to do business in this State or paying taxes to this State is not sufficient to be classified as a "regulated person" because such activities do not directly control the accomplishment of the persons' activities.

2.18 "Regulating authority" means the power of a public official or public employee authorized by law to regulate.

2.19 "Seek employment" means contact, directly or through an intermediary, between a public official or public employee and a regulated person when such contact relates to the availability or conditions of employment in furtherance of obtaining employment outside of government. Responding to an unsolicited inquiry from a regulated person concerning employment does not constitute "seeking employment" if before there is any additional contact, such official or employee applies for the necessary exemption; **Provided**, That if there is no additional contact, such a response will not constitute "seeking employment."

§ 158-11-3. Prohibited employment.

3.1 A full-time public official or public employee may not seek employment with or be offered employment by any person which such officials' or employees' government agency regulates, or may regulate, if in relation to which such official or employee exercises policymaking authority, regulatory authority or other nonministerial authority.

3.2 This prohibition exists only so long as a public employee or public official is employed by the regulating agency and the prohibition ceases immediately upon termination of the officials' or employees' employment.

3.3 No regulated person shall offer employment to a full-time public employee or public official who in relation to such person is authorized to exercise policymaking authority, regulatory authority or other nonministerial authority.

3.4 This prohibition does not exist for any public official or public employee who is not authorized to exercise policymaking authority, rulemaking authority or other nonministerial authority in relation to the prospective employer.

§ 158-11-4. Exemptions.

4.1 A public official or public employee subject to the prohibition in Section 3 of this rule may nevertheless apply to the Ethics Commission for an exemption from the prohibition. An exemption will not be granted for secondary employment (moonlighting) with respect to which person the public official or public employee exercises rulemaking authority, policymaking authority or other nonministerial authority. The application for exemption shall contain the following information.

4.1.1 The name, address and telephone number of the governmental agency by which the applicant is employed;

4.1.2 The applicants' job title and the name of his or her immediate supervisor;

4.1.3 Facts sufficient to support a finding by the Commission that because of the prohibition the applicant is unable to earn a reasonable livelihood of equal salary and employment benefits, in an activity where the applicants' education and training is relevant, and in this State outside of the applicants' governmental agency;

4.1.4 The names of any persons with whom the applicant intends to seek employment and who have matters on which the applicant is currently exercising policymaking authority, regulatory authority or other nonministerial authority;

4.2 Exemptions to the prohibition may be granted by the Commission; **Provided**, That a temporary exemption may be granted by either the Commissions' Chairman or the Commissions' Executive Director and subsequently ratified by the Commission.

4.2.1 Requests for exemptions will be decided within ten (10) working days after being received by the Commission. If additional information is required by the Commission, the request for exemption will be determined within five (5) days after receipt of such information.

4.2.2 Within thirty (30) days after being granted, temporary exemptions must be submitted to the Commission for ratification. Applicants

will be notified of the Commissions' decision or ratification within ten (10) days of the decision being rendered.

4.2.3 Exemptions granted or ratified by the Commission are subject to no time limit.

4.2.4 The Commission shall maintain a record of those applicants who are granted exemptions and, where applicable, the names of those persons with whom such applicants seek employment and in regard to whom they have been required by their supervisors to take official action. To the extent the information contained in such records is not otherwise confidential and exempt from disclosure, such records are public records and are available for public examination and copying.

§ 158-11-5. Conditions for granting an exemption.

5.1 A public official or public employee who has been granted an exemption is subject to the following conditions.

5.1.1 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, the exempted person shall notify his or her supervisor of the exemption and seek to be relieved from official action in regard to such person.

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

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

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

5.1.3 It is a violation of W. Va. 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, unless the exempted person has sought and been denied the authorization of his or her supervisor to avoid such action, and has promptly notified the Commission as provided in subsection 5.1.4 of this rule.

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

5.1.5 The Commission will contact supervisors who have been identified pursuant to subsection 5.1.4 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.

*Hand out 10-2-91
By R. Aiker - Ethics Com.*

PRIVATE GAIN

158-6-9 Private work during Public work hours

Full-time appointed public officials and full-time public employees may not perform private work from which they or any other persons receive private benefit during time when such officials and employees are employed and compensated by their governmental employer.

Handout 10-2-91
DNR - Boating Regs.
By Jeff Moore

6.10. No person shall operate a personal watercraft unless the lanyard cut off switch, if so equipped by the manufacturer, is attached to the operator's person, clothing, or personal floatation device.