

AUGUST 9

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

August 9, 1987 - 3:00 p.m.

COMMITTEE MEETING ROOM, M-438

1. Approval of Minutes - Meeting June 15, 1987
2. REVIEW OF LEGISLATIVE RULES:
 - a. Lottery Commission - State lottery rules and regulations
 - b. DNR-Hazardous Wastes, Series 35-Review (passed during session)
 - c. Dept. Natural Resources - Outfitters and Guides
 - d. DNR-Boating Regulations
 - e. Insurance Commissioner - West Virginia Essential Property Insurance Association
 - f. Insurance Commissioner - Medical Malpractice Annual Reporting Requirements
 - g. Department of Commerce - Rules Governing Public Use of WV State Parks, State Forests and State Hunting and Fishing Areas Under the WV Department of Commerce
 - h. Department of Agriculture - Schedule of Charges for Inspection Service: Fruit, Series 8B
 - i. Department of Energy - Rules and Regulations Governing Performance Standards for Blasting on Surface Mines
 - j. Department of Energy - Rules and Regulations Governing the Certification of Blasters for Surface Mines and Surface Areas of Underground Mines
 - k. Department of Energy - Rules and Regulations Governing Roof Control

1. Department of Highways - Transportation of
Hazardous Wastes upon the Roads and Highways.

3. Other Business:

August 9, 1987

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

3:00 p.m.

Dan Tonkovich,
ex officio nonvoting member

Robert "Chuck" Chambers,
ex officio nonvoting member

Senate

House

Tucker, Chairman
Boettner (absent)
Holmes
Tomblin
Harman
Hylton

Knight, Chairman
Burk
Murphy
Givens
Stiles
Pritt (absent)

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

The minutes of the June 15, 1987, meeting were approved.

Mike Mowery, Committee Counsel, told members of the Committee that the Lottery Commission had supplied copies of its proposed modifications to its proposed rule, State Lottery rules and regulations. He stated that the Attorney General's office feels that Section 2.2.2.2 of the proposed rule is in conflict with the W.Va. Code, §29-22-18(d). Mr. Mowery stated that it is his opinion that the Lottery Commission is correct as far as they have gone and that he disagrees with the Attorney General's opinion. Mr. Knight suggested that the rule lie over until the next meeting. Members of the Committee asked questions of Oscar Wallace, Acting Director of the Lottery Commission and Marion Ray, Assistant Attorney General. Mr. Knight asked if the agency would be willing to amend Section 2.2.2.2 of its proposed modification by deleting the words "not more than forty percent (40%) of gross revenue" in order to satisfy the Attorney General's office. Mr. Wallace agreed to Mr. Knight's request.

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

Mr. Mowery told members of the Committee that he had prepared an abstract on the rule proposed by the Department of Natural Resources, Hazardous Waste, Series 35 (passed during the 1987 Regular Session). He stated that the only problem which he found related to the provisions on surface impoundments. Whereas the Department for the most part had followed federal regulations, in this instance it added a section allowing surface impoundments to stay open under certain conditions. He also mentioned that the Department had only filed those sections of the rule which were being amended and not the entire rule as required by statute. Doug Steele, of the Department of Natural Resources, answered questions from the Committee.

Mr. Knight moved that the proposed rule lie over until the Department complied with the law by filing the full text of the rule that was amended. The motion was rejected.

The Committee discussed the action which it should take on the proposed rule as it had already been approved by the Legislature during the 1987 Regular Session and was simply before the Committee for its review. Mr. Mowery stated that in prior years the Committee simply requested that the agency withdraw its rule. The Committee determined that it would take no action on the proposed rule because the agency has the statutory authority to withdraw a proposed rule at any time.

Debra Graham, Associate Counsel, told members of the Committee that the rule proposed by the Department of Natural Resources, Outfitters and Guides, had been before the Committee at its last meeting and that she had no modifications to suggest.

Mr. Knight moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed her abstract on a rule proposed by the Department of Natural Resources, Boating Regulations. She stated that the agency had agreed to several suggested modifications.

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

Ms. Graham stated that the rule proposed by the Insurance Commissioner, West Virginia Essential Property Association, Series XXI, was presented to the Committee at its last meeting and that she had no modifications to suggest. Cheryl Davis, Counsel to the Insurance Commissioner, and Stanley Clark, a representative of the Insurance Commissioner, answered questions from the Committee.

Mr. Knight moved that the rule be approved. The motion was adopted.

Ms. Graham explained that the rule proposed by the Insurance Commissioner, Medical Malpractice Annual Reporting Requirements, Series XXII, had been distributed to the Committee at its last meeting and that she also had no problems with this rule.

Mr. Knight moved that the rule be approved. The motion was adopted.

Ms. Graham briefly reviewed those concerns which had been expressed by the Committee at its last meeting on the rule proposed by the Department of Commerce, Rules Governing Public Use of West Virginia State Parks, State Forests, and State Hunting and Fishing Areas under the West Virginia Department of

Commerce and stated that the Department had agreed to several modifications. She informed the Committee that their folders contained a resolution from the Natural Resources Commission asking that hunting not be prohibited on the Greenbrier River Trail.

Mr. Tucker called on Brenda Nichols Harper, Deputy Commerce Commissioner, to comment on the Department's reasoning for prohibiting hunting on the Greenbrier River Trail. Ms. Harper reviewed the Department's reasons and stated that if hunting is allowed on the Trail, she feels that management of the Trail should be transferred to the Department of Natural Resources. The following persons spoke in favor of allowing hunting on the Trail: Jim Craft of Peterstown, Buddy Bryant, representing Dawn Sportman's Club of Hinton, Bob Miles of the Department of Natural Resources, Larry Lawson, of West Virginia Bowhunters Association, Senator J. D. Brackenrich and Delegate Sarah Lee Neal. Senator Brackenrich distributed proposed modifications to the proposed rule.

Mr. Tucker asked Ms. Harper if she would be willing to modify the rule to allow hunting on the Trail. Ms. Harper stated that due to the possible legal ramifications she would prefer that the Committee amend the rule instead.

Mr. Knight moved to amend the proposed rule on page two, section 2.4, by deleting the following language: "and on the Greenbrier River Trail" and on page four, section 2.15, subsection 1, by deleting the following language "and on the Greenbrier River Trail". The motion was adopted.

Mr. Givens moved that the proposed rule be approved as modified and as amended. The motion was adopted.

The next proposed rule on the agenda was the rule proposed by the Department of Agriculture, Schedule of Charges for Inspection Service: Fruit, Series 8B. Mr. Tucker told Committee members that he had been advised that representatives from the Department would not be able to attend the meeting due to the fact that the Commissioner had scheduled his annual picnic at that time.

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

Ms. Graham stated that the rule proposed by the Department of Energy, Rules and Regulations Governing Performance Standards for Blasting on Surface Mines, had been discussed at last month's meeting and that she had no modifications to suggest.

Mr. Givens moved that the proposed rule be approved. The motion was adopted.

Ms. Graham explained that the rule proposed by the Department of Energy, Rules and Regulations Governing the Certification of Blasters for Surface Mines and Surface Areas of Underground Mines, had also been before the Committee last month and that she had suggested several modifications to which the Department had agreed.

Mr. Stiles asked Roger Hall, Administrator of the Department of Energy, several questions regarding the proposed rule. He asked Mr. Hall if the proposed rule applies to all miners or just those persons who wish to do blasting. Mr. Hall stated that the rule applies to just those miners who would be engaged in blasting.

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

Ms. Graham reviewed her abstract on the rule proposed by the Department of Energy, Rules and Regulations Governing Roof Control. She explained that the Department had agreed upon her suggestion to make several modifications to the proposed rule. Mr. Knight stated that he would object to the rule on the basis of Section 5 which would allow the Director, in his discretion, to allow roof control plans which do not comply with the regulations. He stated that he felt this would allow the Commissioner to circumvent the Supreme Court ruling in UMW v. Kenneth Faerber, Commissioner, W. Va. Dept. of Energy, (Filed 7-10-86). Mark Scott, Director of the Division of Mines and Minerals, responded that that section would not apply to auger type mining equipment and that the Supreme Court's decision would prevail. He agreed to modify the rule to make this clear.

Mr. Hylton moved that the proposed rule lie over until the September meeting. The motion was adopted.

The final rule on the agenda was the rule proposed by the Department of Highways, Transportation of Hazardous Wastes upon the Roads and Highways. As no agency representative was present at the meeting, Mr. Knight moved that the proposed rule lie over until the September meeting. The motion was adopted.

The Committee discussed the fact that many agencies are not complying with the law in that their filings with the Committee are incomplete. The Committee staff was directed to send a letter to all agencies stating that the law must be complied with or their proposed rules will not be accepted. The staff was also directed to see that a copy of the letter was placed in the State Register.

Mr. Knight explained to the Committee that James Casey, former Chairman of the Committee, had informed him that the Director of the West Virginia Child Advocate Office did not

intend to promulgate rules under W. Va. Code, §29A-3-1, et seq., establishing guidelines for child support awards on or before October 1, 1987, as required by W. Va. Code, §48A-2-8(a). He told the Committee that a copy of a letter outlining the requirements was sent to Sandy Gilmore at the Department of Human Services and that the Committee had not received any filings from the Department.

Mr. Knight moved that staff determine whether or not a proposed rule had been filed with the Secretary of State by the West Virginia Child Advocate Office and that if it has been filed that the Committee call the rule before it for review even though the Department may take the position that it does not have to file the rule. The motion was adopted. Staff was directed to send a letter to the Department of Human Services notifying it of the Committee's action and intention.

Mr. Mowery told members of the Committee that the Lottery folder in front of them contained copies of the materials they had requested regarding prize claim forms.

Members of the Committee were told to be sure to bring copies of all mailed materials to the meeting as no additional copies would be available.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: August 9, 1987

TIME: 3:00 - 5:00 p.m.

NAME	Present	Absent	Yeas	Nays
Chambers, Robert "Chuck", Speaker				
Knight, Thomas A.	✓			
Burk, Robert W., Jr.	✓			
Givens, Roy E.	✓			
Pritt, Charlotte				
Stiles, Floyd R.	✓			
Murphy, Patrick H.	✓			
Tonkovich, Dan, President				
Tucker, Larry A.	✓			
Boettner, John "Si"				
Harman, C. N.	✓			
Holmes, Darrell E.	✓			
Hylton, Tracy W.	✓			
Tomblin, Earl Ray	✓			
TOTAL				

RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Rule-Making Review

DATE: August 9, 1987

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Jim E. CRAFT	Rt. 1 Box 108 Peterstown WV	SELF	X
MAURY E. BRYANT	P.O. Box 158 HINTON, W. VA. 25951	Hinton, W. Va. DAWN SPORTSMAN Club	X
JEFFREY C. HERRON	CHARLESTON, WV	WV DEPT OF NATURAL RESOURCES	
LARRY L. LAWSON	Box 281 Pinewood Rd Pinch WV	WEST VIRGINIA BOWHUNTERS ASSOC	X
JOHN VANDERGRIFF	CHARLESTON	W.V. HOSPITAL ASSC.	
MARK SCOTT	CHARLESTON	WV DEPT. OF ENERGY	
Bob Mills	CHARLESTON	W Va. DNR	Del
OSCAR WALLACE	RITLEY	W. VA. LOTTERY	Neal
Cheryl Davis	CHARLESTON	WV Ins. Dept	-
DAN SELBY	CHARLESTON	WV Ins. Dept	Sen
Richard Stevens	Chas	WV Dental Ass'n	Grand
Stanley Clark	Chas	WV Ins. Dept	132
Bob Foster	Chas.	WVCC	
Brenda Harper		Dept of Commerce	
Son Andrews	Charleston	WV Dept of Commerce	
Doug Stal	Chas.	WV DNR	
Regent Hall	1615 Wash St E PRN	WV DOL	

2.15 Uncased firearms, uncased bows and uncased arrows are prohibited in state parks and recreational facilities managed by the Department of Commerce on state forests and state public hunting and fishing areas, except:

1. ~~When the area is open for hunting (hunting is prohibited in state parks and on the Greenbrier River Trail) or~~ When a registered ~~park or forest~~ guest has the written permission of the area superintendent to carry them ~~cased~~ unloaded from his lodge room, cabin or campsite to open hunting areas, or to an officially designated rifle, pistol, skeet, trap, target or shooting range.
2. ~~Properly licensed hunters may carry uncased but unloaded firearms, uncased bows and uncased arrows on the Greenbrier River Trail during open hunting season.~~
- 3 2. Area superintendents may authorize their use in historical reenactments and plays.
- 4 3. The Director of the Division of Parks and Recreation, Department of Commerce, may authorize their use for a limited period in conjunction with recreational and arts and crafts programs.

2.4 No person shall attempt to or hunt, catch, capture, take, kill, trap, pursue or have in his possession any animal, except as provided in Article 2, Chapter 20 of the Code of West Virginia, 1931, as amended. Hunting is prohibited in all state parks ~~and on the Greenbrier River Trail~~; however, legally authorized hunting is permitted in state forests, state hunting and fishing areas, and on the Greenbrier River Trail.

All references to "state hunting and fishing areas" should be changed to "recreational facilities managed by the Department of Commerce on public hunting and fishing areas." The Department of Commerce is without authority to regulate any other areas.



WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Room M-438, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

Senator Larry A. Tucker, Co-Chairman
Delegate Thomas A. Knight, Co-Chairman

July 28, 1987

M. E. Mowery, Counsel
Debra A. Graham, Associate Counsel
Marie Nickerson, Receiving Clerk

The Honorable Thomas A. Knight
Co-Chairman
Legislative Rule-Making Review Committee
Suite 8, Arcade Building
Charleston, WV 25301

RE: Promulgation of legislative rules by the
Child Advocate Office

Dear Chairman Knight:

It is my understanding that a question has arisen concerning promulgation of rules by the Director of the West Virginia Child Advocate Office.

I believe it is clear that the rules promulgated by the Director generally are to be promulgated in accordance with W. Va. Code, 29A-3-1, et seq. In this regard, I would direct your attention to W.Va. Code, 48A-2-7(a), which reads as follows:

The director may promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code where such rules are required to implement the provisions of this chapter....

More specifically, under the provisions of W.Va. Code, 48A-2-8(a), the Director is mandated to promulgate rules establishing guidelines for Child Support Awards on or before October 1, 1987. That subsection reads as follows:

On or before the first day of October, one thousand nine hundred eighty-seven, the director of the child advocate office shall, by legislative rule, establish guidelines for child support award amounts so as to ensure greater uniformity by those persons who make child support recommendations and enter child

The Honorable Thomas A. Knight 2

July 28, 1987

support orders, and to increase predictability for parents, children and other persons who are directly affected by child support orders....

It would appear to me that these statutory provisions relating to legislative rules are clear and that no exception exists.

Please contact me if you have further questions in regard to this matter.

Sincerely,


M. E. Mowery

MEM:mgn

cc: Sandy Gilmore
Department of Human Services

§ 48A-2-8. Guidelines for child support awards.

(a) On or before the first day of October, one thousand nine hundred eighty-seven, the director of the child advocate office shall, by legislative rule, establish guidelines for child support award amounts so as to ensure greater uniformity by those persons who make child support recommendations and enter child support orders, and to increase predictability for parents, children and other persons who are directly affected by child support orders. Such guidelines shall be followed by the children's advocate, the family law master and the circuit court unless, in each instance, the advocate, master or judge sets forth, in writing, reasons for not following the guidelines in the particular case involved. Notwithstanding the existence of such guidelines, individual cases will still be considered on their own merits.

(b) The Legislature, by the enactment of this article, recognizes that children have a right to share in their natural parents' level of living. Accordingly, guidelines promulgated under the provisions of this section shall not be based upon any schedule of minimum costs for rearing children based upon subsistence level amounts set forth by various agencies of government. The Legislature recognizes that expenditures in families are not made in accordance with subsistence level standards, but are rather made in proportion to household income, and as parental incomes increase or decrease, the actual dollar expenditures for children also increase or decrease correspondingly. In order to ensure that children properly share in their parents' resources, regardless of family structure, the guidelines shall be structured so as to provide that after a consideration of respective parental incomes, that child support will be related, to the extent practicable, to the level of living which such children would enjoy if they were living in a household with both parents present.

(c) The guidelines promulgated under the provisions of this section shall take into consideration the financial contributions of both parents. The Legislature recognizes that expenditures in households are made in aggregate form and that total family income is pooled to determine the level at which the family can live. The guidelines shall provide for examining the financial contributions of both parents in relationship to total income, so as to establish and equitably apportion the child support obligation. Under the guidelines, the child support obligation of each parent will vary proportionately according to their individual incomes.

(d) The guidelines shall be structured so as to take into consideration any preexisting support orders which impose additional duties of support upon an obligor outside of the instant case, and shall provide direction in cases involving split or shared custody.

(e) The guidelines shall have application to cases of divorce, paternity, actions for support, and modifications thereof.

(f) In promulgating the legislative rule provided for under the provisions of this section, the director shall be directed by the following legislative findings:

(1) That amounts to be fixed as child support should not include awards for alimony, notwithstanding the fact that any amount fixed as child support will impact upon the living conditions of custodial parents;

(c) Persons who are employees of the office of child support enforcement in the department of human services on the day preceding the effective date [July 1, 1986] of this section shall be given the option of continuing their employment with the department of human services by filling vacancies in existing positions elsewhere within the department for which they qualify, or such persons shall be assigned to positions in the child advocate office, retaining their then current merit or civil service ratings under the classified service. (1986, c. 42.)

§ 48A-2-7. Powers and duties of the director.

[(a) The director may promulgate legislative rules in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code where such rules are required to implement the provisions of this chapter.]

(b) The director shall annually prepare a proposed budget for the next fiscal year, and submit such budget to the commissioner. Such budget shall include all sums necessary to support the activities of the child advocate office.

(c) In addition to any other duties required by this chapter, the director shall:

(1) Develop and recommend guidelines for the conduct, operations, and procedures of the office and his or her employees, including, but not limited to, the following:

(A) Case load and staffing standards for employees who perform investigation and recommendation functions, enforcement functions, and clerical functions.

(B) Orientation programs for clients of the office.

(C) Public educational programs regarding domestic relations law and community resources, including financial and other counseling, and employment opportunities.

(D) Model pamphlets and procedural forms, which shall be distributed to each local office serving clients.

(2) Provide training programs for the children's advocates and other employees of the office, to better enable them to carry out the duties described in this chapter.

(3) Gather and monitor relevant statistics.

(4) Develop and recommend guidelines to be used in determining whether or not visitation has been wrongfully denied or custody has been abused.

(5) Develop standards and procedures for the transfer of part or all of the responsibilities for a case from one unit of the office to another in situations considered appropriate. (1986, c. 42.)

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