

DECEMBER 9

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TUESDAY, DECEMBER 9, 1986

5:00 P.M.

COMMITTEE MEETING ROOM, E-226

1. Approval of Minutes

2. REVIEW OF LEGISLATIVE RULES:

- a. Dept. of Labor - Preneed Burial Contract Rule
- b. Dept. of Energy - Division of Oil and Gas
- c. WV Industrial and Trade Jobs Development Corporation -
General Administration of the West Virginia Capital
Company Act: Establishment of the application
procedures to implement the act.
- d. Commissioner of Banking - General Rules Implementing the
West Virginia Community Reinvestment Act, Series 4
- e. Civil Service System - Rules and Regulations
- f. WV Hospital Finance Authority - Establishment of fee
schedule and cost allocation applicable to issuance of
bonds by WV Hospital Finance Authority
Modified rule approved by Committee 9-28-86
Review of Amendments to modified rule filed 11-21-86
- g. Department of Health
Licensure of Behavioral Health Centers (amendments)
- h. Department of Energy
Standards for Certification of Coal Mine Electricians
(Series 14 amended)

3. OTHER BUSINESS

Dept. of Natural Resources - Hazardous Waste Management
Regulations, Series 15 - Passed by the Legislature
March 5, 1986 - Re-filed per request of Committee

Lottery Commission - Administrative Rules, Series I, adopted
10-20-86 by agency
Filed 11-18-86 per '29-22-5(1) exemption

there were minor modifications in Series 6, 7 and 8 which had been agreed to by counsel and the Director of the Division.

Mr. Tomblin moved that Series 5, Miscellaneous Water Pollution Control, be approved and that Series 6, Dam Control, Series 7, Solid Waste, and Series 8, Hazardous Waste, be approved as modified. The motion was adopted.

Debra Graham, Associate Counsel, explained that the rule proposed by the West Virginia Industrial and Trades Development Corporation - General Administration of the West Virginia Capitol Company Act: Establishment of the application procedures to implement the act had been laid over from the previous meeting in order to allow Mr. Boettner to determine whether or not the Select Committee on Economic and Community Development intends to amend the authorizing statute in such a way as to require that the proposed rule would need to be amended. Mr. Boettner stated that he had discussed the problem with representatives of the agency and that they had decided that the best course of action would be to go forward with the proposed rule.

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

Ms. Graham told the Committee that she believed that a member of the Committee may want to make a motion to lay over the next rule on the agenda, the rule proposed by the Commissioner of Banking - General Rules Implementing the West Virginia Community Reinvestment Act, Series 4. Mr. Boettner stated that Mr. Knight had an interest in the proposed rule and that since he was unable to attend the meeting that he would like to have the rule laid over until the next meeting.

Mr. Boettner moved that the proposed rule be laid over until the Committee's next meeting. The motion was rejected.

Ms. Graham reviewed the abstract of the proposed rule and stated that the Commissioner had agreed to several modifications.

Mr. Williams told the Committee that Charlotte Pritt would like to address the Committee on the proposed rule. Ms. Pritt told the Committee that she feels that the proposed rule needs to have more teeth in it and recommended that the provisions of the proposed rule be made mandatory rather than permissive.

Kevin Thomas, Deputy Commissioner of Banking spoke on the proposed rule and responded to questions from the Committee.

Ms. Pritt asked to be allowed to ask Mr. Thomas several questions. Mr. Williams denied her request. She then responded to Mr. Thomas' statements.

Mr. Schifano moved that the proposed rule be approved as modified.

Mr. Boettner moved that the proposed rule be amended on page 2, section 3.2 by changing the word "may" to "shall". The motion was rejected.

Mr. Schifano's motion was adopted. Mr. Boettner requested that he be recorded as voting "No".

Ms. Graham explained the rule proposed by the Civil Service Commission - Rules and Regulations. She stated that the Commission had agreed to several minor modifications. Tim Basford, Acting Director of Personnel, responded to questions from the Committee.

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

Ms. Graham explained that the West Virginia Hospital Authority would like to modify its proposed rule that the Committee has already approved. She explained the modifications to the proposed rule - Establishment of fee schedule and cost allocation applicable to issuance of bonds by the West Virginia Hospital Finance Authority. Camden Siegrist, explained the reason for the modifications.

Mr. Boettner moved that the Committee reconsider its action whereby it approved the proposed rule. The motion was adopted.

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

Ms. Graham reviewed the rule proposed by the Department of Health - Licensure of Behavioral Health Centers. She stated that the Department had agreed to several minor modifications. Kay Howard, from the Department answered questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the Board of Health - Hospital Licensure (Amendment - Dentists on Hospital Medical Staffs). She stated that the agency had agreed to several minor modifications. Mr. Shaw asked Kay Howard why the term "Licensed health care professional" was used instead of the term "dentist". Ms. Howard stated that that term was in accordance with national standards.

Mr. Shaw moved to amend the rule by striking the term "licensed health care professional" throughout and by inserting in lieu thereof the term "licensed dentist". The motion was adopted.

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

Ms. Graham explained the rule proposed by the board of Health - Vital Statistics and said that the agency had agreed to several minor modifications. Art Barthelme, State Registrar, of the Department of Health, answered questions from the Committee.

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

Ms. Graham reviewed the rule proposed by the Department of Energy - Standards for Certification of Coal Mine Electricians and stated that the Department had agreed to several modifications.

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

The Committee counsel updated the Committee on the status of the proposed rules that have been filed with the Committee.

Mr. Mowery explained that the Lottery Commission had filed rules with the Secretary of State, claiming a statutory exemption from the rule-making process. He explained that in his opinion the time for the statutory exemption had passed and that there are numerous problems with the rule.

Mr. Boettner moved that the Lottery Commission be requested to file its rules with the Committee for review under the rule-making procedure. The motion was adopted.

Ms. Graham asked for direction from the Committee as to how to handle the refiled rule from the Department of Natural Resources - Hazardous Waste that had been passed during the 1986 Session. The Committee discussed the various options with Ron Shipley, Department of Natural Resources.

Mr. Schifano moved that the Committee reconsider its action whereby it approved the proposed rule. The motion was adopted.

Mr. Schifano moved that the Department be requested to withdraw the proposed rule. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: Dec 9, 1986

TIME: 5:00 p.m.

NAME	Present	Absent	Yeas	Nays
Albright, Joseph P.				
Casey, James M.				
Knight, Thomas A.				
Schifano, Larry E.	✓			
Wiedebusch, Larry				
Shaffer, Charles R.				
Springston, Benjamin	✓			
Tonkovich, President				
Williams, Ralph D.	✓			
Boettner, John "Si"	✓			
Tucker, Larry	✓			
Tomblin, Earl Ray	✓			
Harman, C. N.				
Shaw, Michael	✓			
TOTAL				

RE: _____

M E M O R A N D U M

From: M.E. Mowery, Committee Counsel
To: Members, Legislative Rule-Making Review Committee
Re: West Virginia Lottery Commission -- Legislative and
Procedural Rules

During the 1985 session, the Legislature passed the State Lottery Act, to be administered by the State Lottery Commission.

As passed, W.Va. Code, 29-22-5 provided for the Commission to promulgate rules in accordance with Chapter 29A, but further provided that "those rules promulgated by the commissioner that are necessary to begin the lottery games selected shall be exempted from the provisions of chapter twenty-nine-a of this code in order that the selected games may commence as soon as possible."

This legislation passed on April 13, 1985, and was effective from passage.

On November 18, 1986, some 19 months after the effective date of the legislation, the Lottery Commission filed with the LRMRC, for informational purposes only, a copy of their legislative rules.

Because of this passage of time and the additional fact that the lottery games have already commenced and have been in existence for approximately one year prior to the promulgation of the rules, a question arises as to whether these rules are exempt under the statute or should be reviewed by the LRMRC. It is the opinion of counsel that these rules are not "necessary to begin the lottery games selected" and that they should therefore be subject to the provisions of Chapter 29A.

Further, although counsel has not thoroughly abstracted the rule, a brief examination reveals that they are flawed in their construction in several respects and therefore merit further review and correction. The following examples are submitted:

On page two, subsection 1.18, and elsewhere in the rule, the term "on-line agent" is used, without a definition of the term. Presumably, an on-line agent is a type of "lottery sales agent" as defined in subsection 1.15 (page 2), but this is not clear.

On page 2, subsection 1.19, "person" is defined. As this definition is grammatically constructed, it defines person very narrowly, limiting its application to persons or other various entities "acting in a fiduciary or representative capacity. . ."

On page 12, subdivision 4.2.7 provides for claiming prizes of \$25.00 or less and for claiming prizes of more than \$50.00. No provision is made for claiming prizes of \$50.00.

Accordingly, counsel suggests that this rule is in need of further review.

It would appear to counsel that the LRMRC has several options at this point:

(1) Determine that the rule is properly promulgated without legislative review, and direct a letter to the Commission suggesting that apparent errors in the rule be corrected;

(2) Determine that the rule should properly be submitted to the rule-making process of Chapter 29A, and request the Commission to comply with the statute;

(3) Request the Commission to modify the rule to meet any objections of the LRMRC, and submit the rule to the Legislature for approval, notwithstanding the fact that the filing and public hearing requirements of the law have not been complied with; or

(4) Submit the rule to the Legislature with LRMRC amendments, notwithstanding the fact that the filing and public hearing requirements of the law have not been complied with.

In light of the above, counsel requests the members of the Committee to provide direction as to how they desire staff to proceed on this matter.