

Minnesota Attorney General: Administrative Rules Proceedings

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309

Attorney General

Gregory P. Huwe
Special Assistant
Attorney General
Department of Education

April 22, 1977

296-4692

Michael B. Miller
Special Assistant
Attorney General

HECB Rules 901-917

Returned herewith are the above-captioned rules. As we discussed, the second sentence of the last paragraph of Rule 905 is ambiguous.

Upon resubmission with clarification of this section, I will file the rules with the Secretary of State.

MBM/sr

Enclosures

309

May 2, 1977

Gregory P. Huwe
Special Assistant
Attorney General

- Minnesota Higher Education coordinating board governing the private institution registration program HECB Rules 901-917.

RULES AND REGULATIONS
Chapter Nine: HECB 901-1000
Private Institutions Registration

HECB 901 Purpose

The purpose of this chapter is to provide for the registration of private post-secondary institutions and the approval of degrees to be granted and names to be used under Minn. Stat. 136A.61-136A.71.

HECB 902 Definitions

The following terms, words and phrases shall have the meanings hereinafter ascribed to them for the purpose of this chapter:

(a) "Act" means: Minn. Stat. 136A.61-136A.71;

(b) "Registration" means: the process by which a school pursuant to Minn. Stat. 136A.63 and HECB 903 files an application, submits required information pursuant to Minn. Stat. 136A.64 and HECB 904 and pays fees pursuant to Minn. Stat. 136A.69 and HECB 914;

(c) "School" means: any individual, partnership, company, firm, society, trust, association, corporation or any combination thereof operating or doing business in Minnesota which (1) is, owns or operates a private, non-profit post-secondary education institution, (2) provides a post-secondary instructional program or course leading to a degree whether or not for profit or (3) is, owns or operates a private post-secondary education institution which uses the term "college", "academy", "institute" or "university" in its name or advertising;

(d) "Schools located outside Minnesota which offer programs or courses within Minnesota" in Minn. Stat. 136A.63 means: schools located outside Minnesota which offer any course, program or educational activity which is available to residents of Minnesota and which does not require them to leave the state for the completion of such;

(e) "Degree" means: any award given by a school which signifies or is generally taken to signify completion of a program or course and which is designated by the term degree, associate, bachelor, baccalaureate, master's or doctorate;

(f) "Records" means: those school documents and files containing student data relating to academic credits, grades, degrees awarded and periods of attendance. School transcripts or documents on which are recorded each student's data relating to academic credits earned, courses completed, grades awarded, degrees awarded and periods of attendance qualify as "records";

(g) "Authentic" means: real, genuine, reliable, bona fide;

(h) "Legitimate" means: lawful, reasonable, in accordance with accepted standards;

(i) "Approval" means: authorization from the Board for a school to offer specified degrees or to use the terms "college", "academy", "institute" or "university" in its name or both of the foregoing pursuant to Minn. Stat. 136A.65, HECB 905 and HECB 906;

(j) "Board" means: The Minnesota Higher Education Coordinating Board;

(k) "Executive Director" means: The Executive Director of the Minnesota Higher Education Coordinating Board.

HECB 903 Registration

All schools located within Minnesota and those schools located outside of Minnesota which offer programs or courses within Minnesota shall annually register with the Board. The Board shall by annual resolution adopt and publish a list of those schools registered pursuant to Minn. Stat. 136A.63. A school is registered when it has filed an application, submitted required information pursuant to Minn. Stat. 136A.64 and HECB 904 and pays fees pursuant to Minn. Stat. 136A.69 and HECB 914. A school need not be approved to be registered.

HECB 904 Information Required for Registration

Pursuant to Minn. Stat. 136A.64 schools subject to registration shall provide the Board with such information as the Board needs to determine the nature and activities of the school. The Board shall have the authority to verify the accuracy of the information submitted to it by inspection, visitation or any other means it deems necessary. Any and all information submitted to the Board for the purpose of registration shall be public information in accordance with existing state and federal law.

Each applicant for registration shall submit the following accompanied by an affidavit attesting to the accuracy and truthfulness of the same:

(a) a copy of the school articles of incorporation, constitution, by-laws or other operating documents;

(b) a duly adopted statement of the school's missions and goals;

(c) evidence of any school or program licenses granted by agencies of the State of Minnesota or any other state;

(d) a copy of the current school catalog and if not contained in the catalog:

(1) a list of members of the board of trustees or directors, if any;

(2) a list of current institutional officers;

(3) a list of current faculty, full-time and part-time, with degrees held or applicable experience;

(4) a list and description of all school facilities;

(5) a list and description of all current course offerings;

(6) a list of all requirements for satisfactory completion of courses, programs and degrees;

(7) a statement of the school's policy pertaining to freedom or limitation of expression and inquiry;

(8) a current schedule of fees, charges for tuition, required supplies, student activities, housing and all other standard charges;

(9) a statement of the school policy regarding refunds and adjustments;

(10) a statement of the school policy relating to granting of credit for prior education, training and experience;

(11) a statement of the school policies relating to student admission, evaluation, suspension and dismissal;

(e) a copy of the fiscal balance sheet on an accrual basis or of a certified audit of the immediate past fiscal year for the school;

(f) one copy of all promotional and recruitment materials and advertisements;

(g) a plan for the preservation of student records pursuant to HECB 908.

If on the basis of the above information the Board is unable to determine the nature and activities of a school, the Board will require any additional information needed to make such determination.

HECB 905 Approval of Degrees

Degrees granted by registered schools which meet the requirements of this section, HECB 904, HECB 908 and the policies and standards of HECB 907 shall be approved by the Board if said schools provide:

(a) teaching personnel to provide the educational programs for each degree for which approval is sought;

(b) educational programs leading to each degree for which approval is sought;

(c) appropriate and accessible library, laboratory and other physical facilities to support the educational program for each degree for which approval is sought;

(d) a rationale showing that degree programs are consistent with the school mission and goals.

Degrees granted by registered schools which do not meet these requirements shall not be approved by the Board unless granted conditional approval under HECB 911. No school located in Minnesota even if otherwise registered pursuant to the act and this chapter and no school located outside Minnesota which offers programs or courses within Minnesota even if otherwise registered pursuant to the act shall grant a degree to students in Minnesota where the student has not left Minnesota for the major portion of the program or course unless such degree is approved by the Board. After reviewing the recommendations of its staff and advisory committee, the Board shall by resolution annually adopt and publish a list of schools approved to offer degrees together with a list of the specified degrees so approved.

HECB 906 Approval of Names

The Board shall approve a school using the term "academy", "institute", "college" or "university" in its name provided the school meets the minimum requirements of this chapter. No school subject to registration under HECB 903 shall use the terms "academy", "institute", "college" or "university" in its name in maintaining, advertising, promoting or conducting any program or educational activity in Minnesota without the approval of the Board.

The Board shall approve any school using the above terms in its name if the school meets all the following requirements:

(a) Any school using the term "academy" in its name must meet the policies and standards of HECB 907 and the minimum requirements of this chapter.

(b) Any school using the term "institute" in its name must meet the policies and standards of HECB 907 and the minimum requirements of this chapter.

(c) Any school using the term "college" in its name must meet the policies and standards of HECB 907, must meet the minimum requirements of this chapter and must offer at least one program leading to an associate degree. If it so chooses, it may use the term "academy" or "institute" in its name.

(d) Any school using the term "university" in its name must meet the policies and standards of HECB 907, must meet the minimum requirements of this chapter and must offer at least one program leading to a baccalaureate, master's or doctorate degree. If it so chooses, it may use the term "academy", "institute" or "college" in its name.

(e) A school subject to registration will be granted approval to use the term "college" in its name if the school meets the standards of HECB 907, does not offer an associate degree but proposes to use the term "college" in conjunction with the terms "business" ("commercial"), "barber" or "beauty" to signify the offering of technical and specialized programs providing preparation for career opportunities in the fields of business and barber and beauty services.

HECB 907 Policies and Standards

After reviewing the recommendations of its staff and advisory committee, the Board by resolution shall annually adopt and publish a list of registered schools pursuant to HECB 903, of schools approved to offer specified degrees pursuant to HECB 905 and of schools approved to use the names "college", "academy", "institute" and "university" in Minnesota pursuant to HECB 906. The criteria which will be used to make these determinations with respect to approval are those listed below:

(a) has an organizational framework with administrative and teaching personnel to provide the educational programs it purports to offer;

(b) has financial resources sufficient to meet the school's financial obligations including refunding tuition and other charges consistent with its stated policy in the event of dissolution of the institution or in the event of claims for refund against the institution, to provide service to the students as purported and to provide educational programs leading to degrees as purported;

(c) operates in conformity with generally accepted budgeting and accounting procedures. One such set of standards are those adopted by the National Association of College and University Business Officers.;

(d) provides for an educational program leading to the degree it purports to offer;

(e) provides appropriate and accessible library, laboratory and other physical facilities to support the educational program offered;

(f) has a policy on freedom or limitation of expression and inquiry for faculty and students which is published or available on request;

(g) provides information to students and prospective students concerning:

(1) comprehensive and accurate policies relating to student admission, evaluation, suspension and dismissal;

(2) clear and accurate policies relating to granting of credit for prior education, training and experience and for courses offered by the school;

(3) current schedule of fees, charges for tuition, required supplies, student activities, housing and all other standard charges;

(4) policy regarding refunds and adjustments for withdrawal or modification of enrollment status;

(5) procedures and standards used for the selection of recipients as well as the terms of payment and repayment for any financial aid program;

(h) uses for promotion and student recruitment only publications and advertisements which are truthful and do not give any false, fraudulent, deceptive, inaccurate or misleading impression with respect to the school, its personnel, programs, services or occupational opportunities for its graduates;

(i) has any compensated recruitment agents operating in Minnesota identify themselves as agents of the school when talking to or corresponding with students and prospective students.

Failure to meet any one of these criteria will not necessarily prevent a school from being given approval. Rather a judgment will be made on the basis of a pattern which in the whole supports a legitimate educational program, sufficient finances and sound institutional policies and practices.

HECB 908 Records

Any school located or operating within Minnesota must maintain permanent records for all students enrolled therein at any time. Each school must provide a plan for the preservation of such records which meet the following criteria:

(a) There shall be at least one copy of the records held in a secure depository;

(b) An appropriate official shall be designated to provide copies of the record or transcript when requested to do so by the student;

(c) Provision shall be made for the preservation of student records after the school shall cease to exist. Such provisions shall be consistent with clauses (a) and (b);

(d) In instances where the school does not have a binding agreement for the preservation of student records after the school shall cease to exist, the school shall demonstrate financial security for the preservation of student records after the school shall cease to exist in the form of a continuous surety bond or trust arrangement.

HECB 909 Disapproval and Appeal

If approval for degree or name is not granted by the Board, the applying school shall have the opportunity for a hearing pursuant to Minnesota Statutes, Chapter 15. If a school wishes a hearing, it has 30 days from the date of notification of the Board's decision to present a written request for a hearing.

HECB 910 Withdrawal of Approval

The Board may, after notice and upon providing an opportunity for a hearing pursuant to Minnesota Statutes, Chapter 15 if requested by the parties adversely affected, refuse to renew, revoke or suspend any approval for any one or any combination of the following grounds:

(a) violation of any provisions of the act or of this chapter;

(b) furnishing to the executive director false, misleading or incomplete information;

(c) presenting to prospective students information relating to the school which is false, fraudulent, deceptive, inaccurate in a material respect or misleading;

(d) refusal to allow reasonable inspection or supply reasonable information after written request therefor by the executive director.

HECB 911 Conditional Approval

Notwithstanding anything in this chapter to the contrary, the Board may grant conditional approval of degrees and names for periods of less than one year if to do so would be in the best interests of currently enrolled students or prospective students of registered schools.

HECB 912 Unauthorized Representations

No school and none of its officials or employees shall advertise or represent in any manner that such school is approved or accredited by the Board or state of Minnesota except that any school which is duly registered with the Board or any of its officials or employees may represent that the school is registered with the Board with the following language: "_____ is registered with the Minnesota Higher Education Coordinating Board."

HECB 913 Non-Refundable Fees

All fees collected by the Board pursuant to the act and this chapter are not refundable.

HECB 914 Delegation of Authority

The Executive Director is hereby delegated the authority and responsibility for issuance of public information, designing of application forms, reviewing applications, securing information, making recommendations, setting guidelines and approving uses pursuant to HECB 906(e), the appointment of appropriate advisory committees, the establishment of visitation teams and prescribing of procedures and setting of fees for this program. The Executive Director shall at least annually advise and report to the Board the status of the program.

HECB 915 Advisory Committee

The Executive Director shall appoint an Advisory Committee on Private Institutions of at least 10 but no more than 20 members. The members of the Advisory Committee should be qualified to give respected judgments in those areas covered by the act and this chapter. The principal purposes of the Advisory Committee shall be:

(a) to assist in maintaining an appropriate and responsible environment in which applications for registration and approval will be fairly and equitably reviewed;

(b) to review staff summaries of all applications within established guidelines and criteria;

(c) to review reports of site visitations;

(d) to forward recommendations on all active applications to the Board.

HECB 916 Schools Licensed Under Minnesota Statutes

Any school subject to the provisions of Minnesota Statutes, Chapter 141 (1974) or any school required to be licensed by any board authorized under Minnesota law to issue such licenses must have a currently valid license from the Commissioner of Education of the State of Minnesota or from any other licensing board to which that school is subject prior to any approval by the Board under the act. The Board will accept as final the determinations of the Commissioner of Education and of any other board as to whether a school is subject to the license requirements of Minnesota Statutes, Chapter 141 or any other Minnesota licensing law and whether that school meets the requirements of Chapter 141 and of any other Minnesota licensing law; the Board will not conduct separate inquiries into the substantive basis for those determinations.

The requirement of this rule is in addition to and not a substitute for any other requirements or obligations of this Chapter.

HECB 917 Rights, Duties and Obligations Not Impaired by Minnesota Statutes, Chapter 141

Except as expressly stated to the contrary in this chapter, any action taken pursuant to Minnesota Statutes, Chapter 141 (1974) by the Commissioner of Education of the State of Minnesota in relation to any school, person or other entity does not in any manner alter the rights, duties and obligations of that school, person or entity under this chapter or under Minn. Stat. 136A.61-136A.71.

HECB 990 Separability

If any rule or portion thereof within this chapter or the application thereof to any school or other circumstances is held or declared invalid, the remainder of the chapter and the application of such rule or portion to other schools or circumstances shall not be affected thereby.

APPROVED AS TO FORM AND LEGALITY
APR 2 9 1977
_____ 19____
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

2: P.M
STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 29 1977
Joan Anderson Growe
Secretary of State

MIN 1000

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

TO : Michael B. Miller
Special Assistant
Attorney General
G19K Administration

DATE: April 26, 1977

FROM : Gregory P. Huwe GPH
Special Assistant Attorney General
303 Capitol Square Building

PHONE: 7980

SUBJECT: HECB Rules 901-917

As you discussed with Mike Bradley, I am resubmitting the above-referenced rules, including HECB 905, which states that schools which offer degrees to Minnesota residents must obtain approval of the degree programs, as long as the student obtains the education in Minnesota. Those schools offering degrees to Minnesota residents outside the state need not obtain such approval.

I apologize for the confusion, and I hope that HECB 905 is less ambiguous as a result of our discussions.

GPH:mp

Enclosures

MINNESOTA
HIGHER EDUCATION
COORDINATING COMMISSION

SUITE 400
CAPITOL SQUARE
550 CEDAR STREET
SAINT PAUL 55101

(612) 296-3974

April 1, 1977

Mr. Michael Miller
Office of the Commissioner
Department of Administration
G-19K Administration Building
St. Paul, Minnesota 55155

Dear Mr. Miller:

In accordance with Chapter 15.0412 I am submitting the complete hearing record and rules as adopted by the Higher Education Coordinating Board for implementation of Chapter 136A.61-136A.71. Please note that the final rules adopted by the Board on March 31, 1977 reflect changes which are intended to satisfy the objections of the hearing examiner (Report of the Chief Hearing Examiner, 2/10/77) relating to HECB 905 and HECB 918.

We will be happy to assist you in the review in any way possible and trust you will not hesitate to contact me or Greg Huwe should that be necessary.

Sincerely,

David B. Laird, Jr.
Acting Executive Director

DBL:kb
Enc.

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Michael B. Miller
Special Assistant Attorney General
G19K Administration Building

DATE:

FROM : Gregory P. Huwe GPH
Special Assistant Attorney General
303 Capitol Square Building

PHONE: 6-7980

SUBJECT: Higher Education Coordinating Board Rules

I enclose herewith the required copies of the Rules of the Higher Education Coordinating Board with respect to Private College Registration.

Numerous changes were made in the Proposed Rules before adoption by the Board. As you will note, the Chief Hearing Examiner found two of the changes to be substantial. The Board again changed the rules, specifically by eliminating the term "this proceeding" from HECB 905 and by deleting HECB 918 in its entirety. The Hearing Examiner was informed of this and at his suggestion we are sending the final rules directly to you.

If you have any questions please contact me.

GPH:mp
Enclosures

STATEMENT OF COMPLIANCE
WITH MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Gregory P. Huwe, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Gregory P. Huwe
Special Assistant Attorney General

Dated: April 1, 1977

CERTIFICATE OF BOARD'S
ADOPTION OF RULES RESOLUTION

I, Mary Schertler, do hereby certify that I am secretary of the Higher Education Coordinating Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Higher Education Coordinating Board duly and properly called and held on the thirty-first day of March, 1977; that a quorum was present at said meeting, that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> Resolved, that the rules relating to Private Institutions Registration be and they hereby are approved and adopted as recommended in Findings of Fact, dated January 27, 1977, by Richard C. Hawk, and in conformance with the recommendations of the Chief Hearing Examiner as reported on February 10, 1977, pursuant to authority vested in us by Minn. Stat. § 136A.16 and that Richard C. Hawk, Executive Director of the Higher Education Coordinating Board, be and hereby is authorized to sign an order adopting these rules.

In Witness Whereof, I have hereunto subscribed my name this thirty-first day of March, 1977.

Mary Schertler

MARY SCHERTLER, Secretary
Higher Education Coordinating Board

Emil A. Erickson

Attested to by
EMIL A. ERICKSON, Vice President
Higher Education Coordinating Board

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE HIGHER EDUCATION COORDINATING BOARD

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA HIGHER EDUCATION COORDINATING BOARD GOVERNING THE PRIVATE INSTITUTION REGISTRATION PROGRAM.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on April 6, 1976, and was recessed to and reconvened on April 20, 1976, before Myron Greenberg, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. §15.052, Subd. 3, was issued to the Higher Education Coordinating Board on November 15, 1976; and

WHEREAS, the Higher Education Coordinating Board has now determined to adopt rules pursuant to Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Higher Education Coordinating Board has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner, having reviewed the rules as proposed to be finally adopted by the agency, pursuant to Rule HE 107, finds that with the exception of proposed final rules HECB 905 and 918, that the rules are not substantially different from those proposed at the public hearing and that the Higher Education Coordinating Board has met all requirements of Minn. Stat. §15.0412, Subd. 4.

With respect to HECB 905, the Chief Hearing Examiner specifically finds that the use of the term "this proceeding" in two instances within the rule, are totally foreign to this rules hearing and are terms needing further definition, and more specifically, as they were not proposed in the Notice of Hearing or at the public hearing, that no opportunity for public response has been afforded, thus compelling the finding that the rule is substantially changed from that as proposed in the Notice of Hearing or at the public hearing.

With respect to HECB 918, "Exemption for Religious Schools", it is specifically found that such proposed exemption was not discussed in the Notice of Hearing nor was such exemption proposed by the agency at the time of the public hearing and that, therefore, the rule as proposed for final adoption is substantially different.

NOW, THEREFORE, upon receipt of this Report, the Higher Education Coordinating Board should withdraw proposed final rule HECB 918 or reconvene a hearing on the rule, and should either withdraw HECB 905, reconvene a hearing on the rule, or modify the language in conformance with the record in this matter. The Higher Education Coordinating Board has the responsibility of submitting the complete hearing record and the final rules as adopted by the Board to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. §15.0412, Subd. 4.

Dated this 10th day
of February, 1977.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
HIGHER EDUCATION COORDINATING BOARD

In the Matter of the Proposed
Adoption of Rules of the
Higher Education Coordinating
Board Governing Private
Institutions Registration

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Myron Greenberg, Hearing Examiner of the Office of Hearing Examiner of the State of Minnesota on the 6th and 20th days of April 1976, which hearings were held respectively in Conference Room A, Capitol Square Building, 550 Cedar Street, and Room 51, State Office Building, Wabasha and Park Street, in St. Paul, Minnesota, after proper notice required by Minn. Stat., Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having reviewed all of the testimony, having considered all of the evidence adduced, having considered the Report of the Hearing Examiner, having made my Findings of Fact, and upon all of the testimony and proceedings herein, and applicable statutory standards or criteria, having withheld action on the proposed rules for the required period of time after receipt of the Hearing Examiner's Findings, and having confirmed the need for the above-captioned rules and the reasonableness thereof.

Now, therefore, it is ordered that these rules identified as HECB 901-990, attached hereto as "Exhibit A", are adopted this twenty-fourth day of February, 1977, pursuant to authority vested in me by resolution of the Higher Education Coordinating Board dated February 24, 1977 and by Minn. Stat. § 136A.03.

RICHARD C. HAWK
Executive Director
Higher Education Coordinating Board

STATEMENT OF COMPLIANCE
WITH MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Gregory P. Huwe, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Gregory P. Huwe
Special Assistant Attorney General

Dated: April 1, 1977

CERTIFICATE OF BOARD'S
ADOPTION OF RULES RESOLUTION

I, Mary Schertler, do hereby certify that I am secretary of the Higher Education Coordinating Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Higher Education Coordinating Board duly and properly called and held on the thirty-first day of March, 1977; that a quorum was present at said meeting, that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> Resolved, that the rules relating to Private Institutions Registration be and they hereby are approved and adopted as recommended in Findings of Fact, dated January 27, 1977, by Richard C. Hawk, and in conformance with the recommendations of the Chief Hearing Examiner as reported on February 10, 1977, pursuant to authority vested in us by Minn. Stat. § 136A.16 and that Richard C. Hawk, Executive Director of the Higher Education Coordinating Board, be and hereby is authorized to sign an order adopting these rules.

In Witness Whereof, I have hereunto subscribed my name this thirty-first day of March, 1977.

Mary Schertler

MARY SCHERTLER, Secretary
Higher Education Coordinating Board

Emil A. Erickson

Attested to by
EMIL A. ERICKSON, Vice President
Higher Education Coordinating Board

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE HIGHER EDUCATION COORDINATING BOARD

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA HIGHER EDUCATION COORDINATING BOARD GOVERNING THE PRIVATE INSTITUTION REGISTRATION PROGRAM.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on April 6, 1976, and was recessed to and reconvened on April 20, 1976, before Myron Greenberg, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. §15.052, Subd. 3, was issued to the Higher Education Coordinating Board on November 15, 1976; and

WHEREAS, the Higher Education Coordinating Board has now determined to adopt rules pursuant to Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Higher Education Coordinating Board has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner, having reviewed the rules as proposed to be finally adopted by the agency, pursuant to Rule HE 107, finds that with the exception of proposed final rules HECB 905 and 918, that the rules are not substantially different from those proposed at the public hearing and that the Higher Education Coordinating Board has met all requirements of Minn. Stat. §15.0412, Subd. 4.

With respect to HECB 905, the Chief Hearing Examiner specifically finds that the use of the term "this proceeding" in two instances within the rule, are totally foreign to this rules hearing and are terms needing further definition, and more specifically, as they were not proposed in the Notice of Hearing or at the public hearing, that no opportunity for public response has been afforded, thus compelling the finding that the rule is substantially changed from that as proposed in the Notice of Hearing or at the public hearing.

With respect to HECB 918, "Exemption for Religious Schools", it is specifically found that such proposed exemption was not discussed in the Notice of Hearing nor was such exemption proposed by the agency at the time of the public hearing and that, therefore, the rule as proposed for final adoption is substantially different.

NOW, THEREFORE, upon receipt of this Report, the Higher Education Coordinating Board should withdraw proposed final rule HECB 918 or reconvene a hearing on the rule, and should either withdraw HECB 905, reconvene a hearing on the rule, or modify the language in conformance with the record in this matter. The Higher Education Coordinating Board has the responsibility of submitting the complete hearing record and the final rules as adopted by the Board to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. §15.0412, Subd. 4.

Dated this 10th day
of February, 1977.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

COUNTY OR RAMSEY

BEFORE MYRON GREENBERG
HEARING EXAMINER
OFFICE OF HEARING EXAMINER

In the Matter of the Proposed
Adoption of Rules of the Minnesota
Higher Education Coordinating Board
Governing the Private Institution
Registration Program

FINDINGS OF FACT

The above-titled matter came on for hearing before Myron Greenberg, Hearing Examiner of the Office of Hearing Examiner of the State of Minnesota on the 6th and 20th days of April, 1976, which hearings were held respectively in Conference Room A, Capitol Square Building, 550 Cedar Street, and Room 51, State Office Building, Wabasha Street and Park Avenue, in St. Paul, Minnesota, after proper notice required by Minn. Stat., Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having reviewed all of the testimony, having considered all of the evidence adduced, having considered the Report of the Hearing Examiner, and upon all of the testimony and proceedings herein, and applicable statutory standards or criteria, having withheld action on the proposed rules for the required period of time after receipt of the Hearing Examiner's Findings, I find the following:

1. That, with the exception of the finding of fact of the hearing examiner with regard to HECB 902(d), the findings of fact of the hearing examiner accurately reflect the facts of the record.

2. That HECB 902(d) as proposed is a reasonable and necessary definition to implement the authority granted the Board in Minn. Stat. 136A.63. In advancing this finding, the Board agrees with the hearing examiner (Report of the Hearing Examiner, p. 9) that "some definition of the phrase schools located outside Minnesota which offer programs or courses within Minnesota is necessary".

3. That the statutory mandate "to provide assistance and protection for persons choosing private institutions and programs" (Minn. Stat. 136A.61) requires an equal application of the statute to all types of institutions and delivery modes which result in the provision of post-secondary services which fall within the definitions of "schools" (HECB 902c) and "degrees" (HECB 902e) to citizens of the State of Minnesota. Therefore, the proposed definition in HECB 902(d) is drawn to include all such services delivered to citizens residing within the state, but to exclude institutions and programs for which residents of the state would actually leave the state for the delivery of such services.

4. It is reasonable to adopt a definition as in HECB 902(d) which does relate to the offering of programs and courses within Minnesota and which does not include activities unrelated to the offering and delivery of such programs and courses.

5. The proposed definition in HECB 902(d) is designed to provide equal and non-discriminatory application of the act and rules to schools serving students in Minnesota.

6. There is an increasing need to relate constructively to the rapidly growing number of schools operating multi-state branches, cells and satellites. Such delivery units, if not subject to registration and review could very easily provide a natural haven for unfair competition, illegitimate service and questionable practices. The basis for the Board's concern is illustrated in the report of the national Airlie Conference, Approaches to State Licensing of Private Degree-Granting Institutions:

> "A principal purveyor of continuing education in Norfolk, Virginia is a District of Columbia University located on a federal military installation. A Colorado institution comes to the nation's capitol, gets a charter through a non-degree granting corporation, and sets up degree programs in the District of Columbia and suburban Maryland. An Iowa institution has a degree-program office in the Pentagon. A St. Louis college offers a master's program on a military base north of Chicago. A unit of the University of California operates in Cleveland. Continuing education for Indians on a South Dakota reservation is now the preserve of a Nebraska state college. A state planning board prohibits duplicate program development within the state, but then an out-of-state institution enters the state to offer the program as an external degree." (pp. 22-23)

The proposed definition in HECB 902(d) will provide for jurisdiction over such courses.

7. There is evidence of similar branch, cell and satellite activities in Minnesota and the staff has received general complaints and questions as a result. It is apparent that several schools from bases in other states are offering college credit programs to students in Minnesota at home, at their place of work, and at military installations in the state. Several out-of-state schools are offering doctoral programs which allow students to complete most, if not all, of their work in Minnesota. One such school was circulating the following offer to a resident of Minnesota:

> "There are many other institutions in existence similar to this College that charge from $500.00 to $3,500.00 for this same service. But our degrees are awarded based upon your completing our requirements, which are minimum, and the required tuition fee to cover our costs. Please remember, there are no classes to attend, no books to buy or home study courses in our requirements."

8. That it is essential that the rules for implementing Minn. Stat. 136A.61-136A.71 apply uniformly to all schools which are offering programs and courses to residents in the state. As the examples above illustrate, failure to apply the rules to satellites, branches, cells, networks as well as correspondence schools will retain a void in protection that the act was intended to fill and will provide a haven for illegitimate activity detrimental to residents as well as legitimate institutions.

9. That in a time when enrollments are fluctuating and the post-secondary marketplace is becoming increasingly interstate in nature, competition from out-of-state schools offering programs and courses in Minnesota will most likely increase, thus increasing the necessity for HECB 902(d).

10. The proposed definition in HECB 902(d) is a reasonable approach which will allow it to meet its responsibilities under the statute and to provide broad and equitable coverage over those activities which hold the potential for causing difficulties or problems for the citizens of the state.

11. That the recommended changes suggested by the hearing examiner, with the exception of his recommendation with regard to HECB 902(d) and the additional changes identified herein, will result in the proposed rules being clearer and less subject to misinterpretation. Those changes are as follows:

a. That the numbering within the rules has been modified to achieve both internal continuity and a form consistent with other state rules and regulations. Based upon the hearing examiner's recommendation these modifications have been made using the rules of the Office of the State Register and the Office of the Hearing Examiner as a guide.

b. That HECB 901 has been modified to read as recommended by the hearing examiner on page 7 of his report. The purpose of the amendment is to improve and clarify the stated purpose of the proposed rules without altering the putative purpose of the regulations.

c. That HECB 902(a) and subsequent references to the statutory base of the rules have been updated to reflect the codification of 1975 session laws.

d. That HECB 902(c) should be amended to add after "3" the phrase "is, owns or operates a private, post-secondary education institution which". This proposed amendment is made in response to testimony at the hearing and the recommendation of the hearing examiner, contained on page 9 of his Findings of Fact, for the purpose of clarification. Questions had been raised about the extent to which non-education organizations and activities would be subject to the purview of the act and rules, and the additional language specifies both the intent and extent of the application.

e. That HECB 902(i) has been modified, as recommended by the hearing examiner on page 11 of his Findings of Fact, to better distinguish between registration under the act and rules and requirements and activities relating to the Board's authority to grant approval for the offering of degrees and to use certain names.

f. That HECB 904 has been modified, pursuant to the recommendation of the hearing examiner on page 13 of his Findings of Fact, to clarify the distinction between procedures for registration and determinations for approval by removing reference to approval in the regulation. This is possible because all schools must register pursuant to HECB 903 and HECB 904; those which seek approval must further comply with HECB 905 and HECB 906. The modifications in the introductory paragraphs were proposed at the hearing and reviewed by the examiner and represent a more concise statement of the documentation required for registration.

g. That HECB 904(c) in the original proposed rules has been deleted in accordance with suggestions in the hearing testimony and by the hearing examiner on page 15 of his Findings of Fact.

h. That HECB 904(d)8 has been modified as suggested at the hearing and by the hearing examiner on page 15 of his Findings of Fact to add clarity and precision to the type of fees and charges which the Board needs to have identified.

i. For the reasons specified in Findings of Fact 11f, supra, the last paragraph in HECB 904 has been modified to eliminate the reference to approval determinations for the purposes of clarity.

j. That HECB 905 as proposed was subject to confusion as to what was specifically required for the approval of degrees as distinct from the registration of a school and other determinations made by the Board. The hearing examiner on pages 15-17 suggested several changes. To rectify the concerns raised it is recommended that HECB 905 be amended as shown in the revised proposed rules. The result of the proposed amendment is to:

i. Clarify the differences among requirements for the approval of degrees, for registration and for other determinations made by the Board while not changing the requirements of the original rule.

ii. The first sentence of the amended HECB 905 has been added to emphasize those qualities which are necessary for all schools granting degrees as distinct from requirements for specific degree levels.

iii. While none of the references to HECB 904, HECB 907 or HECB 908 place requirements on schools in addition to those of the original proposed rules, the references place emphasis on the importance of adequate information for determining the nature of the school, of meeting general standards of authenticity and legitimacy and of maintaining permanent student records for all schools granting degrees.

iv. HECB 905(a-d) are substitutions for the references to HECB 908.06-HECB 908.08 in the original set of proposed rules and regulations. These are the same standards, restated to clearly identify that each degree approved must be congruent with the school's mission and supported with adequate curricula, faculty and facilities.

v. The final sentence in the section has been transferred from HECB 908 of the original proposed rules to clarify the intent of the Board as to its procedures for adopting and identifying schools approved to offer degrees and degrees approved.

12. That HECB 903 has been amended to include three additional clarifying sentences. The amending language eliminates confusion identified at the hearing regarding the requirements of registration and procedures for the approval of names and degrees. The amending language is intended to clarify that the registration procedure does not include judgmental action by the Board and is distinct from other actions and determinations by the Board under these rules.

13. That HECB 904(c) in the revised proposed rules be amended to add the additional phrase "or any other state" which was suggested during the hearing and discussed by several witnesses. This addition is in keeping with the spirit of the original rules and will be of primary assistance to registering institutions which are licensed by governmental bodies in other states.

14. That HECB 904(d)7 has been modified to bring the section into conformity with other sections of the revised rules.

15. That the suggestion to expand HECB 904(d)7 to include a "statement pertaining to the intention of the institution to provide procedural safeguards and due process in internal disputes" in testimony at the hearing and by the hearing examiner on page 14 of his Findings of Fact is not reasonable because it would by the rule of a state agency extend the due process clause of the U.S. Constitution to private schools. Since the Constitution does not mandate due process, this agency cannot mandate due process.

16. The amendment of HECB 906 to replace the language "be deemed legitimate and authentic by the Board" with the language "meet the policies and standards of HECB 907" serves to clarify the distinction between the approval of names under HECB 906 and other determinations and actions of the Board in other sections of the rules. Similarly, the deletion of the language "under HECB 905" contained originally in HECB 906(c) and HECB 906(d) eliminates a redundancy previously contained in those provisions. These modifications are in response to the questions raised at the hearing and potential confusion about distinctions among actions by the Board.

17. That the requirements of HECB 906(c) and HECB 906(d) as proposed are reasonable and adequate.

18. That the hearings on the proposed rules identified some confusion about the policies and standards to be used by the Board in making its determinations within the proposed rules and some confusion as well as concern about specific items within the proposed section. Therefore it is proposed that HECB 908 be amended as shown in the revised proposed HECB 907. The revised rule:

a. Provides greater clarity and precision and should be of assistance to both the Board in the exercise of its responsibilities and to institutions who wish to understand their obligations under the statute and rules.

b. HECB 907(a) has been modified as a result of testimony and suggestions at the hearing with the purpose of providing a more concise and clear statement of the proposed standard.

c. With the addition of administrative and teaching personnel in HECB 907(a), the original HECB 908.08 is redundant and it has therefore been deleted.

d. HECB 907(b) has been modified to provide a clearer and less ambiguous interpretation of the school's obligation in response to concerns and suggestions expressed at the hearing.

e. HECB 907(c) has been modified to provide a clearer statement of the proposed standard which will provide fair and equitable guidance for both the Board and affected institutions in its application.

f. HECB 907(d), HECB 907(e) and HECB 907(f) have been modified as a result of questions and concerns raised at the hearing and the alternative wording selected is consistent with that suggested at the hearing. These modifications are a more concise statement of the proposed standard which will provide fair and equitable guidance for both the Board and affected institutions in application.

g. HECB 907(g) has been modified in accordance with testimony at the hearing and suggestions made by the hearing examiner to provide for greater clarity and precision in expressing standards to be addressed by the Board. As recommended by the hearing examiner, an oversight in (g)2 has been corrected by the addition of language relating to the granting of credit for courses offered by the school. Since this information is already required under HECB 904, this is not an added burden to institutions or a change in the nature of intent of the rules.

h. HECB 907 contains as its last paragraph the third and fourth sentences of the second paragraph of HECB 908. This transfer in the position in the rules was suggested by the hearing examiner as the most appropriate placement of a provision relating to exemptions. The modifications have been made to bring this section into conformity with other sections of the revised rules.

i. The modifications throughout HECB 907 are consistent with the suggestions of the hearing examiner and concerns expressed in testimony at the hearing.

19. That HECB 907 has been renumbered as HECB 908 and has been modified in accordance with concerns expressed at the hearing, by the hearing examiner and action taken by the 1976 Legislature in delaying implementation of the act. The modified language is intended to cause the requirements for record-keeping to coincide with implementation of the act and application of the proposed rules.

20. That HECB 908(b) has been modified with the deletion of the word "school" to clarify that other types of officials could be so designated as in the case of a school which ceases to exist. This change is the result of questions and concerns raised at the hearing.

21. That HECB 908(d) has been modified with the substitution of the term "agreement" for "contract" to alleviate the concerns raised by witnesses at the hearing and the hearing examiner about the ability of an educational division of a corporation to enter into contracts with the parent body. The substitute language should clarify this situation and provide for an equitable application of the rule in differing organizational structures.

22. That there is a need to add a section HECB 918, "Exemption For Religious Schools", to provide against constitutional encroachments from the application of these rules. The proposed addition is as follows:
HECB 918 Exemption For Religious Schools

(a) The following schools are exempt from this Chapter: Any school

(1) which is substantially owned, operated or supported by a bona fide religious church or religious organization;

(2) whose programs or courses are solely or primarily designed for, aimed at and attended by persons who sincerely hold or seek to learn the particular religious faith or beliefs of that church or religious organization; and

(3) whose programs or courses are solely or primarily intended to prepare its students to become ministers of, enter into some other vocation closely related to, or conduct their lives in consonance with the particular faith of that church or religious organization.

(b) This exemption shall not extend to any school which through advertisements, solicitations or any other means represents to any students or prospective students that the school, its aims, goals, missions or purposes, or its programs or courses are in any way different than those criteria described above. In particular, this exemption shall not extend to any school which represents to any student or prospective student that its programs or courses will in any way prepare the student for a vocation outside that particular religious faith or provide the student with a general educational program recognized by other schools or the broader educational, business or social community as being substantially equivalent to the educational programs offered by schools not exempt from Minn. Stat. 136A.61-136A.71 and this chapter of regulations.

(c) Departments or branches of schools which meet the criteria listed in (a) shall be exempted even if the school as a whole is not exempted.

(d) Whether or not a particular school is exempted, nothing in Minn. Stat. 136A.61-136A.71 or this chapter of regulations shall be interpreted as permitting the Board to determine the truth or falsity of any particular set of religious beliefs.

The basis for this proposed rule is that:

a. The arguments presented at the hearings by representatives of Minnesota seminaries and their advocates are compelling and that the Legislature would not intend to have the agency encroach upon the constitutionally preserved separation of church and state.

b. The addition of HECB 918 will provide an adequate basis on which a bona fide religious school may claim an exemption from the application of these rules based upon the sectarian or general religious nature of its activities.

c. The proposed addition also provides for situations in which only a portion of a school dedicated to religious purposes can claim an exemption in the same manner.

d. The proposed section clarifies that the Board has no intention of attempting to determine the truth or falsity of any particular set of religious beliefs.

23. Given the findings in this matter, the agreement with testimony presented at the hearings, and the common assumption that the Legislature would not intend for the Board to act unconstitutionally, I am of the opinion that this addition should not be construed as a substantive change in the proposed rules but rather a clarification of the application of the rules based upon constitutional and statutory principles.

January 27, 1977
Date

Richard C. Hawk
Executive Director
HIGHER EDUCATION COORDINATING BOARD

CERTIFICATE OF COMMISSION'S
AUTHORIZING RESOLUTION

I, Mary Schertler, do hereby certify that I am secretary of the Minnesota Higher Education Coordinating Commission, a commission duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Commission duly and properly called and held on the 18th day of December, 1975, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, that Richard C. Hawk, the Executive Director of the Minnesota Higher Education Coordinating Commission, be and he hereby is granted the authority and directed to call a hearing for the purpose of promulgating the rules of the Minnesota Higher Education Coordinating Commission governing the Private Institutions Registration Program as authorized by Minnesota Session Laws (1975), Chapter 201, as well as perform any and all acts incidental thereto, including but without being limited thereto, signing an order for hearing and notice of hearing as well as securing a hearing examiner for all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 18th day of December, 1975.

Mary Schertler
Secretary

Ronald C. Hamerlinck
President

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE MYRON GREENBERG
Hearing Examiner
OFFICE OF HEARING EXAMINER

In the matter of the Proposed
Adoption of Rules of the Minnesota
Higher Education Coordinating Board
Governing the Private Institutions
Registration Program

ORDER FOR HEARING

To effectively implement Minnesota Laws 1975, Chapter 201, which law establishes a Private Institutions Registration Program, the Minnesota Higher Education Coordinating Board deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in the Board by Minnesota Laws 1975, Chapter 380.

NOW, THEREFORE, IT IS ORDERED on this 27th day of February 1976, that a public hearing on the proposed rules captioned above be held in Conference Room A, First Floor of the Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, on April 6, 1976, commencing at 9:00 a.m. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA
HIGHER EDUCATION COORDINATING
BOARD

By _____
RICHARD C. HAWK
Executive Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE MYRON GREENBERG
Hearing Examiner
OFFICE OF HEARING EXAMINER

In the matter of the Proposed
Adoption of Rules of the Minnesota
Higher Education Coordinating Board
Governing the Private Institutions
Registration Program

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to Minnesota Laws 1975, Chapter 380, Section 2, in the above entitled matter in Conference Room A, First Floor of the Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, on April 6, 1976, commencing at 9:00 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted without appearing at the hearing.

Under Minnesota Statutes, Section 10A.01, Subdivision 11 (1974), any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. The State Ethics Commission is located at 410 State Office Building, St. Paul, Minnesota 55155.

The Board proposes to adopt rules relating to the implementation of Minnesota Laws 1975, Chapter 201, by establishing policy and procedures to assure the authenticity and legitimacy of private post-secondary institutions and programs, to provide assistance and protection for persons choosing private institutions and programs and by providing standards and criteria for those purposes.

Copies of the proposed rules are now available and may be obtained by writing to the Minnesota Higher Education Coordinating Board, Suite 400, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

STATE OF MINNESOTA
HIGHER EDUCATION COORDINATING
BOARD

By _____
RICHARD C. HAWK
Executive Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed
Adoption of Rules of the Minnesota
Higher Education Coordinating Board
Governing the Private Institutions
Registration Program

I hereby certify that the attached 471 labels constitute the complete list of persons, associations, and other interested groups who as of 11:30 o'clock am this 27th day of February, 1976, have requested pursuant to Minnesota Laws 1975, Chapter 380 § 2, (15.0412 M.S.) that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

By Reid Dion

AFFIDAVIT

Karen Buchre, being duly sworn on oath deposes and says:

1) That she is an employee of the Higher Education Coordinating Board of the State of Minnesota.

2) That on the 27th day of February 1976, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minnesota Laws 1975, Chapter 380 § 2.

3) That on the 27th day of February 1976, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Karen Buchre

Subscribed and sworn to before me
this 27 day of February 1976.

Judith A. Morgan

JUDITH A. MORGAN
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES SEPT. 14, 1982

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed
Adoption of Rules of the Minnesota
Higher Education Coordinating Board
Governing the Private Institutions
Registration Program

AFFIDAVIT
OF MAILING

Karen Buehre, being first duly sworn, deposes and says:

That on the 3rd day of March 1976, at the City of St. Paul, County of Ramsey, State of Minnesota, She served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State as well as to all persons listed on the attached sheet as presently being members of the Minnesota Legislature.

Karen Buehre

Subscribed and sworn to before me
this 4th day of March 1976.

Judith A. Morgan

JUDITH A. MORGAN
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES SEPT. 14, 1982

PROPOSED
RULES

Chapter Nine: HECB 901-1000
Private Institutions Registration

HECB 901 Purpose

The purpose of this chapter is to augment Minnesota Session Laws, Chapter 201 (1975) and to provide assistance and protection for persons choosing private institutions and programs by providing policies, procedures, standards, and criteria assuring the authenticity and legitimacy of private post-secondary institutions and programs.

HECB 902 Definitions

The following terms, words and phrases shall have the meanings hereinafter ascribed to them for the purpose of this chapter:

(a) "Act" means: Minnesota Session Laws (1975), Chapter 201;

(b) "Registration" means: the process by which a school pursuant to section 3 of the act and HECB 903 files an application, submits required information pursuant to section 4 of the act and HECB 904, and pays fees pursuant to section 9 of the act and HECB 914;

(c) "School" means: any individual, partnership, company, firm, society, trust, association, corporation, or any combination thereof, operating or doing business in Minnesota, which (1) is, owns or operates a private, non-profit post-secondary education institution, (2) provides a post-secondary instructional program or course leading to a degree whether or not for profit, or (3) uses the term "college", "academy", "institute", or "university" in its name or advertising;

(d) "Schools located outside Minnesota which offer programs or courses within Minnesota" in section 3 of the act means: schools located outside Minnesota which offer any course, program, or educational activity which is available to residents of Minnesota and which does not require them to leave the state for the completion of such;

(e) "Degree" means: any award given by a school which signifies or is generally taken to signify completion of a program or course and which is designated by the term degree, associate, bachelor, baccalaureate, master's or doctorate;

(f) "Records" means: those school documents and files containing student data relating to academic credits, grades, degrees awarded, and periods of attendance. School transcripts or documents on which are recorded each student's data relating to academic credits earned, courses completed, grades awarded, degrees awarded, and periods of attendance qualify as "records";

(g) "Authentic" means: real, genuine, reliable, bona fide;

(h) "Legitimate" means: lawful, reasonable, in accordance with accepted standards;

(i) "Approval" means: the process by which the Board, pursuant to section 5 of the act, HECB 905 and HECB 906 determines which legitimate and authentic schools meet the minimal requirements to offer specified degrees or to use the terms "college", "academy", "institute", or "university" in its name, or both of the foregoing;

(j) "Board" means: The Minnesota Higher Education Coordinating Board;

(k) "Executive Director" means: The Executive Director of the Minnesota Higher Education Coordinating Board.

HECB 903 Registration

All schools located within Minnesota and those schools located outside of Minnesota which offer programs or courses within Minnesota shall annually register with the Board.

HECB 904 Information for Application

Pursuant to section 4 of the act, schools subject to registration and approval shall provide the Board with such information as the Board needs to determine the nature and activities of the school. The Board shall have the authority to verify the accuracy of the information submitted to it by inspection, visitation, or any other means it deems necessary. Any and all information submitted to the Board for the purpose of registration and approval shall be public information in accordance with existing state and federal law.

As a basis for the review by the Board, each applicant for registration or approval shall submit the following accompanied by an affidavit attesting to the accuracy and truthfulness of the submissions:

(a) a copy of the school constitution, by-laws, charter, or operating policies;

(b) a duly adopted statement of the school's missions and goals;

(c) evidence of registration with the Minnesota Secretary of State, if appropriate;

(d) evidence of any program licenses granted by agencies of the State of Minnesota;

(e) a copy of the current school catalog and if not contained in the catalog:

1. a list of members of the board of trustees or directors, if any;
2. a list of current institutional officers;
3. a list of current faculty, full-time and part-time, with degrees held or applicable experience;
4. a list and description of all school facilities;
5. a list and description of all current course offerings;
6. a list of all requirements for satisfactory completion of courses, programs, and degrees;
7. a statement of the school's policy pertaining to freedom of expression and inquiry;
8. an accurate, up-to-date, and detailed schedule of fees, charges for tuition, required supplies, student activities, housing and all other typical charges;
9. a statement of the school policy regarding refunds and adjustments;
10. a statement of the school policy relating to granting of credit for prior education, training, and experience;
11. a statement of the school policies relating to student admission, evaluation, suspension, and dismissal;

(f) a copy of the fiscal balance sheet on an accrual basis or of a certified audit of the immediate past fiscal year for the school;

(g) one copy of all promotional and recruitment materials and advertisements;

(h) a plan for the preservation of student records pursuant to HECB 907.

If on the basis of the above information the Board is unable to determine the nature and activities of a school and its programs or to approve degrees or names, the Board will require any additional information needed to make such judgments.

HECB 905 Approval of Degrees

The Board shall approve degrees granted by registered schools deemed authentic and legitimate by the Board if said degrees meet the requirements of HECB 908.06, HECB 908.07, and HECB 908.08. Degrees granted by schools which are not deemed legitimate and authentic shall not be approved by the Board. Degrees which do not meet the requirements of HECB 908.06, HECB 908.07, and HECB 908.08 shall not be approved by the Board unless granted conditional approval under HECB 911. No school subject to registration, even if otherwise registered pursuant to the act, shall grant a degree to students in Minnesota where the student has not left Minnesota for the major portion of the program or course unless such a degree has been approved by the Board.

HECB 906 Approval of Names

The Board shall approve a school using the term "academy", "institute", "college", or "university" in its name provided the school meets the minimum requirements of this chapter. No school subject to registration under HECB 903 shall use the terms "academy", "institute", "college", or "university" in its name in maintaining, advertising, promoting, or conducting any program or educational activity in Minnesota without the approval of the Board.

The Board shall approve any school using the above terms in its name if the school meets all the following requirements:

.10 Any school using the term "academy" in its name must be deemed legitimate and authentic by the Board and must meet the minimum requirements of this chapter.

.20 Any school using the term "institute" in its name must be deemed legitimate and authentic by the Board and must meet the minimum requirements of this chapter.

.30 Any school using the term "college" in its name must be deemed legitimate and authentic by the Board, must meet the minimum requirements of this chapter, and must offer at least one program leading to an associate degree which is approved as a degree under HECB 905. If it so chooses, it may use the term "academy" or "institute" in its name.

.40 Any school using the term "university" in its name must be deemed legitimate and authentic by the Board, must meet the minimum requirements of this chapter, and must offer at least one program leading to a baccalaureate, master's, or doctorate degree which is approved as a degree under HECB 905. If it so chooses, it may use the term "academy", "institute", or "college" in its name.

.50 A school subject to registration will be granted approval to use the term "college" in its name if the school is deemed legitimate and authentic by the Board, does not offer an associate degree, but proposes to use the term "college" in conjunction with the terms "business", "barber", or "beauty" to signify the offering of technical and specialized programs providing preparation for career opportunities in the fields of business and barber and beauty services.

HECB 907 Records

Retroactive to August 1, 1975 any school located or operating within Minnesota must maintain permanent records for all students enrolled therein at any time. Each school must provide a plan for the preservation of such records which meet the following criteria:

(a) There shall be at least one copy of the records held in a secure depository;

(b) An appropriate school official shall be designated to provide copies of the record or transcript when requested to do so by the student;

(c) Provision shall be made for the preservation of student records after the school shall cease to exist. Such provisions shall be consistent with clauses (a) and (b);

(d) In instances where the school does not have a binding contract for the preservation of student records after the school shall cease to exist, the school shall demonstrate financial security for the preservation of student records after the school shall cease to exist in the form of a continuous surety bond or trust arrangement.

HECB 908 Policies and Standards

After reviewing the recommendations of its staff and advisory committee, pursuant to HECB 904, the Board by resolution shall annually adopt and publish a list of registered schools which have been judged as legitimate and authentic, of schools approved to offer specified degrees, and of schools approved to use the names "college", "academy", "institute", and "university" in Minnesota.

A school shall be deemed authentic and legitimate if in the judgment of the Board it has a genuine educational program, sufficient finances, and sound institutional policies and practices. Among the criteria which will be used to determine if a school meets these standards are those listed below. Failure to meet any one of these criteria will not necessarily prevent a school from being judged authentic and legitimate. Rather a judgment will be made on the basis of a pattern which in the whole supports a legitimate educational program sufficient finances, and sound institutional policies and practices.

A legitimate and authentic school is one which:

.01 has a statement of its mission and goals which is consistent with its charter, constitution, by-laws, or operating procedures;

.02 has an organizational framework and publicly identified personnel to provide and to carry out the programs consistent with its duly adopted charter, constitution, by-laws, or operating policies;

.03 if it has a board of directors or trustees, clearly identifies in accounting procedures and makes available for inspection any compensation to board members as a result of board membership;

.04 has a financial condition sufficient to meet the school's financial obligations; to refund all tuition and other charges, within a reasonable period of time, in the event of dissolution of the school or in the event of any claims for refund against the school by the student body; to provide purported service to its students; and for the proper use and support of the school to be maintained;

.05 operates in conformity with generally accepted budgeting and accounting procedures. The Board recommends the standards adopted by the National Association of College and University Business Officers.

.06 has an educational program and curriculum which is a clearly defined sequence of learning experiences through courses, laboratory work, field experience, or independent work and which provides the student a depth and breadth of knowledge appropriate to the field and to the level of the degree;

.07 has educational programs and curriculum which are consistent with the school missions and goals;

.08 supports the curriculum with a faculty qualified by experience and training to teach the content of the program and to evaluate student performance and with appropriate and accessible library, laboratory, and other facilities;

.09 has an official policy on freedom or limitation of expression and inquiry for faculty and students which is published or available on request;

.10 promotes the welfare and educational advancement of the student by providing policies and information to students and prospective students including:

a. official school statistics pertaining to retention, graduation and readmission of students;

b. stated and accurate policies relating to student admission, evaluation, suspension and dismissal;

c. stated and accurate policies relating to granting of credit for prior education, training, and experience;

d. an accurate, up-to-date, and detailed schedule of fees, charges for tuition, required supplies, student activities, housing and all other typical charges, and the school observes such schedules as are provided or published;

e. an official policy regarding refunds and adjustments to students who withdraw or alter enrollment status and the policy and procedures are observed as published;

f. if the school has a financial aid program, a comprehensive and accurate description of the procedures and standards used for selection of recipients as well as terms of payment and repayment;

.11 uses for promotion and student recruitment only publications and advertisements which are truthful and do not give any false, fraudulent, deceptive, inaccurate, or misleading impression with respect to the school, its personnel, programs, services, or occupational opportunities for its graduates;

.12 requires any compensated recruitment agents operating in Minnesota identify themselves as recruitment agents of the school when talking to or corresponding with students and prospective students.

HECB 909 Disapproval and Appeal

If approval for degree or name is not granted by the Board or a school is not deemed authentic and legitimate by the Board, the applying school shall have the opportunity for a hearing pursuant to Minnesota Statutes, Chapter 15. If a school wishes a hearing, it has 30 days from the date of notification of the Board's decision to present a written request for a hearing.

HECB 910 Withdrawal of Approval

The Board may, after notice and upon providing an opportunity for a hearing, pursuant to Minnesota Statutes, Chapter 15 if requested by the parties adversely affected, refuse to renew, revoke, or suspend any approval for any one or any combination of the following grounds:

(a) violation of any provisions of the act or of this chapter;
(b) furnishing to the executive director false, misleading, or incomplete information;
(c) presenting to prospective students information relating to the school which is false, fraudulent, deceptive, substantially inaccurate or misleading;
(d) refusal to allow reasonable inspection or supply reasonable information after written request therefor by the executive director.

HECB 911 Conditional Approval

Notwithstanding anything in this chapter to the contrary, the Board may grant conditional approval of degrees, and names for periods of less than one year if to do so would be in the best interests of currently enrolled students or prospective students of registered schools.

HECB 912 Unauthorized Representations

No school and none of its officials or employees shall advertise or represent in any manner that such school is approved or accredited by the Board or state of Minnesota except that any school which is duly registered and has been judged authentic and legitimate by the Board, or any of its officials or employees, may represent that the school is registered with the Board with the following language: "_____ is registered with and has been judged authentic and legitimate by the Minnesota Higher Education Coordinating Board."

HECB 913 Non-Refundable Fees

All fees collected by the Board pursuant to the act and this chapter are not refundable in the event that an application is not approved in whole or in parts.

HECB 914 Delegation of Authority

The Executive Director is hereby delegated the authority and responsibility for issuance of public information, designing of application forms, reviewing applications, securing information, making recommendations, setting guidelines and approving uses pursuant to HECB 906.50, the appointment of appropriate advisory committees, the establishment of visitation teams, and prescribing of procedures and setting of fees for this program. The Executive Director shall at least annually advise and report to the Board the status of the program.

HECB 915 Advisory Committee

The Executive Director shall appoint an Advisory Committee on Private Institutions of at least 10 but no more than 20 members. The members of the Advisory Committee should be qualified to give respected judgments in those areas covered by the act and this chapter. The principal purposes of the Advisory Committee shall be:
(a) to assist in maintaining an appropriate and responsible environment in which applications for registration and approval will be fairly and equitably reviewed;
(b) to review staff summaries of all applications within established guidelines and criteria;
(c) to review reports of site visitations;
(d) to forward recommendations on all active applications to the Board.

HECB 916 Schools Licensed Under Minnesota Statutes

Any school subject to the provisions of Minnesota Statutes, Chapter 141 (1974), or any school required to be licensed by any board authorized under Minnesota law to issue such licenses, must have a currently valid license from the Commissioner of Education of the State of Minnesota or from any other licensing board to which that school is subject prior to registration by the Board under the act. The Board will accept as final the determinations of the Commissioner of Education and of any other board as to whether a school is subject to the license requirements of Minnesota Statutes, Chapter 141 or any other Minnesota licensing law and whether that school meets the requirements of Chapter 141 and of any other Minnesota licensing law; the Board will not conduct separate inquiries into the substantive basis for those determinations.

The requirement of this rule is in addition to, and not a substitute for, any other requirements or obligations of this Chapter.

HECB 917 Rights, Duties, and Obligations Not Impaired by Minnesota Statutes, Chapter 141

Except as expressly stated to the contrary in this chapter, any action taken pursuant to Minnesota Statutes, Chapter 141 (1974) by the Commissioner of Education of the State of Minnesota in relation to any school, person, or other entity does not in any manner alter the rights, duties, and obligations of that school, person, or entity under this chapter or under Minnesota Laws 1975, Chapter 201.

HECB 990 Separability

If any rule, or portion thereof, within this chapter, or the application thereof to any school or other circumstances, is held or declared invalid, the remainder of the chapter, and the application of such rule or portion to other schools or circumstances shall not be affected thereby.

RULES AND REGULATIONS
Chapter Nine: HECB 901-1000
Private Institutions Registration

HECB 901 Purpose

The purpose of this chapter is to provide for the registration of private post-secondary institutions and the approval of degrees to be granted and names to be used under Minn. Stat. 136A.61-136A.71.

HECB 902 Definitions

The following terms, words and phrases shall have the meanings hereinafter ascribed to them for the purpose of this chapter:

(a) "Act" means: Minn. Stat. 136A.61-136A.71;

(b) "Registration" means: the process by which a school pursuant to Minn. Stat. 136A.63 and HECB 903 files an application, submits required information pursuant to Minn. Stat. 136A.64 and HECB 904 and pays fees pursuant to Minn. Stat. 136A.69 and HECB 914;

(c) "School" means: any individual, partnership, company, firm, society, trust, association, corporation or any combination thereof operating or doing business in Minnesota which (1) is, owns or operates a private, non-profit post-secondary education institution, (2) provides a post-secondary instructional program or course leading to a degree whether or not for profit or (3) is, owns or operates a private post-secondary education institution which uses the term "college", "academy", "institute" or "university" in its name or advertising;

(d) "Schools located outside Minnesota which offer programs or courses within Minnesota" in Minn. Stat. 136A.63 means: schools located outside Minnesota which offer any course, program or educational activity which is available to residents of Minnesota and which does not require them to leave the state for the completion of such;

(e) "Degree" means: any award given by a school which signifies or is generally taken to signify completion of a program or course and which is designated by the term degree, associate, bachelor, baccalaureate, master's or doctorate;

(f) "Records" means: those school documents and files containing student data relating to academic credits, grades, degrees awarded and periods of attendance. School transcripts or documents on which are recorded each student's data relating to academic credits earned, courses completed, grades awarded, degrees awarded and periods of attendance qualify as "records";

(g) "Authentic" means: real, genuine, reliable, bona fide;

(h) "Legitimate" means: lawful, reasonable, in accordance with accepted standards;

(i) "Approval" means: authorization from the Board for a school to offer specified degrees or to use the terms "college", "academy", "institute" or "university" in its name or both of the foregoing pursuant to Minn. Stat. 136A.65, HECB 905 and HECB 906;

(j) "Board" means: The Minnesota Higher Education Coordinating Board;

(k) "Executive Director" means: The Executive Director of the Minnesota Higher Education Coordinating Board.

HECB 903 Registration

All schools located within Minnesota and those schools located outside of Minnesota which offer programs or courses within Minnesota shall annually register with the Board. The Board shall by annual resolution adopt and publish a list of those schools registered pursuant to Minn. Stat. 136A.63. A school is registered when it has filed an application, submitted required information pursuant to Minn. Stat. 136A.64 and HECB 904 and pays fees pursuant to Minn. Stat. 136A.69 and HECB 914. A school need not be approved to be registered.

HECB 904 Information Required for Registration

Pursuant to Minn. Stat. 136A.64 schools subject to registration shall provide the Board with such information as the Board needs to determine the nature and activities of the school. The Board shall have the authority to verify the accuracy of the information submitted to it by inspection, visitation or any other means it deems necessary. Any and all information submitted to the Board for the purpose of registration shall be public information in accordance with existing state and federal law.

Each applicant for registration shall submit the following accompanied by an affidavit attesting to the accuracy and truthfulness of the same:

(a) a copy of the school articles of incorporation, constitution, by-laws or other operating documents;

(b) a duly adopted statement of the school's missions and goals;

(c) evidence of any school or program licenses granted by agencies of the State of Minnesota or any other state;

(d) a copy of the current school catalog and if not contained in the catalog:

(1) a list of members of the board of trustees or directors, if any;

(2) a list of current institutional officers;

(3) a list of current faculty, full-time and part-time, with degrees held or applicable experience;

(4) a list and description of all school facilities;

(5) a list and description of all current course offerings;

(6) a list of all requirements for satisfactory completion of courses, programs and degrees;

(7) a statement of the school's policy pertaining to freedom or limitation of expression and inquiry;

(8) a current schedule of fees, charges for tuition, required supplies, student activities, housing and all other standard charges;

(9) a statement of the school policy regarding refunds and adjustments;

(10) a statement of the school policy relating to granting of credit for prior education, training and experience;

(11) a statement of the school policies relating to student admission, evaluation, suspension and dismissal;

(e) a copy of the fiscal balance sheet on an accrual basis or of a certified audit of the immediate past fiscal year for the school;

(f) one copy of all promotional and recruitment materials and advertisements;

(g) a plan for the preservation of student records pursuant to HECB 908.

If on the basis of the above information the Board is unable to determine the nature and activities of a school, the Board will require any additional information needed to make such determination.

HECB 905 Approval of Degrees

Degrees granted by registered schools which meet the requirements of this section, HECB 904, HECB 908 and the policies and standards of HECB 907 shall be approved by the Board if said schools provide:

(a) teaching personnel to provide the educational programs for each degree for which approval is sought;

(b) educational programs leading to each degree for which approval is sought;

(c) appropriate and accessible library, laboratory and other physical facilities to support the educational program for each degree for which approval is sought;

(d) a rationale showing that degree programs are consistent with the school mission and goals.

Degrees granted by registered schools which do not meet these requirements shall not be approved by the Board unless granted conditional approval under HECB 911. No school located in Minnesota even if otherwise registered pursuant to the act and this chapter and no school located outside Minnesota which offers programs or courses within Minnesota even if otherwise registered pursuant to the act shall grant a degree to students in Minnesota where the student has not left Minnesota for the major portion of the program or course unless such degree is approved by the Board. After reviewing the recommendations of its staff and advisory committee, the Board shall by resolution annually adopt and publish a list of schools approved to offer degrees together with a list of the specified degrees so approved.

HECB 906 Approval of Names

The Board shall approve a school using the term "academy", "institute", "college" or "university" in its name provided the school meets the minimum requirements of this chapter. No school subject to registration under HECB 903 shall use the terms "academy", "institute", "college" or "university" in its name in maintaining, advertising, promoting or conducting any program or educational activity in Minnesota without the approval of the Board.

The Board shall approve any school using the above terms in its name if the school meets all the following requirements:

(a) Any school using the term "academy" in its name must meet the policies and standards of HECB 907 and the minimum requirements of this chapter.

(b) Any school using the term "institute" in its name must meet the policies and standards of HECB 907 and the minimum requirements of this chapter.

(c) Any school using the term "college" in its name must meet the policies and standards of HECB 907, must meet the minimum requirements of this chapter and must offer at least one program leading to an associate degree. If it so chooses, it may use the term "academy" or "institute" in its name.

(d) Any school using the term "university" in its name must meet the policies and standards of HECB 907, must meet the minimum requirements of this chapter and must offer at least one program leading to a baccalaureate, master's or doctorate degree. If it so chooses, it may use the term "academy", "institute" or "college" in its name.

(e) A school subject to registration will be granted approval to use the term "college" in its name if the school meets the standards of HECB 907, does not offer an associate degree but proposes to use the term "college" in conjunction with the terms "business" ("commercial"), "barber" or "beauty" to signify the offering of technical and specialized programs providing preparation for career opportunities in the fields of business and barber and beauty services.

HECB 907 Policies and Standards

After reviewing the recommendations of its staff and advisory committee, the Board by resolution shall annually adopt and publish a list of registered schools pursuant to HECB 903, of schools approved to offer specified degrees pursuant to HECB 905 and of schools approved to use the names "college", "academy", "institute" and "university" in Minnesota pursuant to HECB 906. The criteria which will be used to make these determinations with respect to approval are those listed below:

(a) has an organizational framework with administrative and teaching personnel to provide the educational programs it purports to offer;

(b) has financial resources sufficient to meet the school's financial obligations including refunding tuition and other charges consistent with its stated policy in the event of dissolution of the institution or in the event of claims for refund against the institution, to provide service to the students as purported and to provide educational programs leading to degrees as purported;

(c) operates in conformity with generally accepted budgeting and accounting procedures. One such set of standards are those adopted by the National Association of College and University Business Officers.;

(d) provides for an educational program leading to the degree it purports to offer;

(e) provides appropriate and accessible library, laboratory and other physical facilities to support the educational program offered;

(f) has a policy on freedom or limitation of expression and inquiry for faculty and students which is published or available on request;

(g) provides information to students and prospective students concerning:

(1) comprehensive and accurate policies relating to student admission, evaluation, suspension and dismissal;

(2) clear and accurate policies relating to granting of credit for prior education, training and experience and for courses offered by the school;

(3) current schedule of fees, charges for tuition, required supplies, student activities, housing and all other standard charges;

(4) policy regarding refunds and adjustments for withdrawal or modification of enrollment status;

(5) procedures and standards used for the selection of recipients as well as the terms of payment and repayment for any financial aid program;

(h) uses for promotion and student recruitment only publications and advertisements which are truthful and do not give any false, fraudulent, deceptive, inaccurate or misleading impression with respect to the school, its personnel, programs, services or occupational opportunities for its graduates;

(i) has any compensated recruitment agents operating in Minnesota identify themselves as agents of the school when talking to or corresponding with students and prospective students.

Failure to meet any one of these criteria will not necessarily prevent a school from being given approval. Rather a judgment will be made on the basis of a pattern which in the whole supports a legitimate educational program, sufficient finances and sound institutional policies and practices.

HECB 908 Records

Any school located or operating within Minnesota must maintain permanent records for all students enrolled therein at any time. Each school must provide a plan for the preservation of such records which meet the following criteria:

(a) There shall be at least one copy of the records held in a secure depository;

(b) An appropriate official shall be designated to provide copies of the record or transcript when requested to do so by the student;

(c) Provision shall be made for the preservation of student records after the school shall cease to exist. Such provisions shall be consistent with clauses (a) and (b);

(d) In instances where the school does not have a binding agreement for the preservation of student records after the school shall cease to exist, the school shall demonstrate financial security for the preservation of student records after the school shall cease to exist in the form of a continuous surety bond or trust arrangement.

HECB 909 Disapproval and Appeal

If approval for degree or name is not granted by the Board, the applying school shall have the opportunity for a hearing pursuant to Minnesota Statutes, Chapter 15. If a school wishes a hearing, it has 30 days from the date of notification of the Board's decision to present a written request for a hearing.

HECB 910 Withdrawal of Approval

The Board may, after notice and upon providing an opportunity for a hearing pursuant to Minnesota Statutes, Chapter 15 if requested by the parties adversely affected, refuse to renew, revoke or suspend any approval for any one or any combination of the following grounds:

(a) violation of any provisions of the act or of this chapter;

(b) furnishing to the executive director false, misleading or incomplete information;

(c) presenting to prospective students information relating to the school which is false, fraudulent, deceptive, inaccurate in a material respect or misleading;

(d) refusal to allow reasonable inspection or supply reasonable information after written request therefor by the executive director.

HECB 911 Conditional Approval

Notwithstanding anything in this chapter to the contrary, the Board may grant conditional approval of degrees and names for periods of less than one year if to do so would be in the best interests of currently enrolled students or prospective students of registered schools.

HECB 912 Unauthorized Representations

No school and none of its officials or employees shall advertise or represent in any manner that such school is approved or accredited by the Board or state of Minnesota except that any school which is duly registered with the Board or any of its officials or employees may represent that the school is registered with the Board with the following language: "_____ is registered with the Minnesota Higher Education Coordinating Board."

HECB 913 Non-Refundable Fees

All fees collected by the Board pursuant to the act and this chapter are not refundable.

HECB 914 Delegation of Authority

The Executive Director is hereby delegated the authority and responsibility for issuance of public information, designing of application forms, reviewing applications, securing information, making recommendations, setting guidelines and approving uses pursuant to HECB 906(e), the appointment of appropriate advisory committees, the establishment of visitation teams and prescribing of procedures and setting of fees for this program. The Executive Director shall at least annually advise and report to the Board the status of the program.

HECB 915 Advisory Committee

The Executive Director shall appoint an Advisory Committee on Private Institutions of at least 10 but no more than 20 members. The members of the Advisory Committee should be qualified to give respected judgments in those areas covered by the act and this chapter. The principal purposes of the Advisory Committee shall be:

(a) to assist in maintaining an appropriate and responsible environment in which applications for registration and approval will be fairly and equitably reviewed;

(b) to review staff summaries of all applications within established guidelines and criteria;

(c) to review reports of site visitations;

(d) to forward recommendations on all active applications to the Board.

HECB 916 Schools Licensed Under Minnesota Statutes

Any school subject to the provisions of Minnesota Statutes, Chapter 141 (1974) or any school required to be licensed by any board authorized under Minnesota law to issue such licenses must have a currently valid license from the Commissioner of Education of the State of Minnesota or from any other licensing board to which that school is subject prior to any approval by the Board under the act. The Board will accept as final the determinations of the Commissioner of Education and of any other board as to whether a school is subject to the license requirements of Minnesota Statutes, Chapter 141 or any other Minnesota licensing law and whether that school meets the requirements of Chapter 141 and of any other Minnesota licensing law; the Board will not conduct separate inquiries into the substantive basis for those determinations.

The requirement of this rule is in addition to and not a substitute for any other requirements or obligations of this Chapter.

HECB 917 Rights, Duties and Obligations Not Impaired by Minnesota Statutes, Chapter 141

Except as expressly stated to the contrary in this chapter, any action taken pursuant to Minnesota Statutes, Chapter 141 (1974) by the Commissioner of Education of the State of Minnesota in relation to any school, person or other entity does not in any manner alter the rights, duties and obligations of that school, person or entity under this chapter or under Minn. Stat. 136A.61-136A.71.

HECB 990 Separability

If any rule or portion thereof within this chapter or the application thereof to any school or other circumstances is held or declared invalid, the remainder of the chapter and the application of such rule or portion to other schools or circumstances shall not be affected thereby.

STATE OF MINNESOTA
OFFICE OF HEARINGS EXAMINERS

FOR THE HIGHER EDUCATION COORDINATING BOARD

In the Matter of the Proposed Adoption of Rules of the Minnesota Higher Education Coordinating Board Governing the Private Institution Registration Program.

REPORT OF HEARING EXAMINER

The hearing in the above-entitled matter was convened by Myron Greenberg, duly appointed Hearing Examiner, on April 6, 1976 at 9:00 a.m., in Conference Room A, Capitol Square Building, 550 Cedar Avenue, St. Paul, Minnesota, was recessed to and reconvened on April 20, 1976 at 9:00 a.m. in Room 51, State Office Building, Wabasha Street and Park Avenue, St. Paul, Minnesota, and continued until all representatives of associations or other interested groups or persons had an opportunity to participate and be heard concerning the adoption of the proposed rules.

Appearing on behalf of the Higher Education Coordinating Board (hereinafter "Board"), were Richard C. Hawk, Executive Director; Dr. David Laird, Assistant Executive Director for Inter-Institutional Program Planning; Ann Kelley, Coordinator of the Private Institutions Registration Program; and Mark Levinger, Special Assistant Attorney General. Also appearing was Judy Hamilton, member of the Board.

Pursuant to Minn. Stat. § 15.052, subd. 3 (1975 Supp.), this Report includes Findings of Fact, Conclusions and Recommendations. The Board and the Office of Hearing Examiners will make a copy of this Report available for review to any interested person upon request. Copies of the Report will be furnished at a nominal cost.

The Board shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record to the Chief Hearing Examiner, pursuant to Minn. Rule HE 108, no earlier than ten days subsequent to the receipt of this Report. It shall include the rules as originally proposed, and the rules as proposed for adoption in final form. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit

his report to the Board on the issue of substantial changes in the rules within ten calendar days. The Board will be responsible for filing the rules with the Attorney General.

The Hearing Examiner, upon all of the records, files, evidence, arguments of counsel and written comments, hereby makes the following as his:

FINDINGS OF FACT

1. On March 3, 1976, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice and to all members of the Legislature.

2. On March 5, 1976, the Board filed with the Office of Hearings Examiners the following documents:

(a) The Order for Hearing;

(b) The Notice of hearing as mailed;

(c) The Affidavit of Receipt of the Secretary of State's list;

(d) The Affidavit of Mailing;

(e) The Affidavit of Mailing of a Notice pursuant to Minn. Stat. § 15.0412, subd. 6, a copy of the Notice and material received pursuant to the Notice.

(f) The names of Board personnel who will represent the Board.

On April 1, 1976, the Board filed its Statement of Need with the Office of Hearing Examiners. The documents were available for inspection at the Office of Hearings Examiners from the date of filing to the date of the hearing. It should be noted that at the time the documents listed above were filed, Minn. Rule HE 103 required such filing five days prior to the hearing. (That provision has been amended to require filing of documents 25 days prior to the hearing.)

3. The record was closed after allowing 20 days for submission of written comments at the end of the day on May 10, 1976.

4. Statutory authority for the Board to promulgate rules is found at Chapter 201, § 10, Minn. Laws 1975. That legislation has been codified in Minnesota Statutes as §§ 136A.61 - 136A.71, and is hereinafter referred to as "Act" or by reference to Chapter 201, or Minn. Stat. § 136A.

5. Much comment and discussion in this matter focussed on the issue of the Board's statutory authority to adopt these rules. There is general agreement, and the Examiner finds that the Board has more than adequately documented its statutory authority to adopt rules in general. Whether or not it has documented such authority on specific rules will be dealt with by the Examiner as each particular rule is discussed.

The Board's position on statutory authority can be found in Exhibit 9 and in the transcript of the proceedings in testimony of Richard Hawk, its Executive Director, and Dr. David Laird, its Assistant Executive Director at pp. 11, 12, 17, 204, 205 and 238. Other comments were by the Minnesota Association of Private Vocational Schools (MAPVS) (Ex. 18 and T. 123); LaSalle Extension University (Ex. 17, p. 8, and T. 176), and Mr. John Markert, Executive Director of the Minnesota Catholic Conference (T. 97-98).

Additionally, as the question of legislative intent was raised, a transcript of the Minnesota State Senate Education Committee meeting of April 18, 1975 (where Senate File 1432, later to become Minn. Stat. Ch. 201, was discussed), was introduced at the hearing as Exhibit 17. The Examiner has compared this transcript to the original tape recording of that meeting and finds it to be accurate.

6. Notice is taken that on April 6, 1976, the same day as the first day of the hearing on the proposed rules, the Legislature passed Senate File 2581, known as Chapter 331, Laws 1976. Section 29 of that Chapter mandates:

> "The Higher Education Coordinating Board shall not, prior to March 1, 1977, enforce any provisions of §§ 136A.61 to 136A.71, or any rules or regulations promulgated thereunder."

The fact that the proposed rules may not be enforced does not affect the procedure whereby such rules are proposed, heard, promulgated and adopted.

The MAPVS suggests that the Minnesota Legislature enacted Chapter 331, § 29, as an indication that it "had second concerns about the 'expertise of the Board' to effect rules and manage this law [Chapter 201]." (Ex. 18, p. 3) The Examiner disagrees with this position. The legislature may have suspended implementation

of rules under Chapter 201 for any number of reasons, including the realization that Chapter 201 may be improved upon or clarified.

7. Constitutional questions about the Act and the proposed rules were raised at the hearing and in comments submitted after the hearing. The primary areas of concern were (a) separation of church and state (the Establishment Clause); (b) vagueness of language subject to arbitrary and capricious interpretation; and, (c) lack of due process in the taking of economic assets. An additional constitutional issue of whether the Act and/or rules limit free speech was raised but not pursued in any depth. (T. 92)

Detailed comments and testimony on this issue were received from Mr. Markert (Ex. 12, p. 2; T. 91), Mr. Lloyd Svendsbye, President of Luther Theological Seminary in St. Paul (T. 108, 131-132), and other representatives of religious institutions.

Mr. Markert requested that the Hearing Examiner ask for an Attorney General's opinion regarding the constitutional issue (T. 95). Such request must be denied as it was noted that the Attorney General has never passed on the constitutionality of a statute that is currently in force. The Attorney General has the duty, under the laws of Minnesota, to defend all statutes which were duly enacted and will not give an opinion that would void such duly enacted statute (T. 113).

It is further noted that under Minn. Stat. § 15.0412, subd. 4, the Attorney General must review and approve all rules as to their legality. Because of such statutory restrictions, the Examiner makes no specific findings regarding the constitutionality of the Act or the proposed rules.

8. Administrative notice was taken that a public hearing was conducted on January 22, 1976, regarding similar proposed rules of the Higher Education Coordinating Board (then known as the Higher Education Coordinating Commission). (T. 8) The record of that hearing and written comments received after the hearing were not considered by the Examiner in the instant proceeding as they were not offered as part of this record.

9. The Board's activities prior to the hearing and its participation at the hearing indicate a genuine concern for the development and promulgation of adequate rules to carry out the mandate of the Act. Summarizing such activities, Dr. Laird stated:

> "In preparing for the implementation of this Act, the staff has met with several interested parties from the private vocational school sector [including the MAPVS (T.128-130)] and from the private college sector, studied laws and rules of over 30 states, examined the current practices of federal and private approval and accrediting agencies, and has sought advice from Minnesota officials in the Department of Education, the Consumer Division of the Attorney General's office, and from authorities in the District of Columbia, Florida, Illinois, Massachusetts, New Jersey, and the National Post-secondary Education Convening Authority. In addition, the staff has studied a number of in-depth analyses of state-approval and consumer protection in higher education, and has carefully analyzed the testimony received in conjunction with the January 22nd hearing on a prior set of proposed rules for the same purpose." (T. 17; Ex. 9, p. 1)

He also pointed out that "Minnesota is only one of 34 states which registers post-secondary educational institutions." (T. 18)

10. Support of, opposition to and general criticism of the proposed rules was offered throughout the hearing and in comments. General support came from students, student organizations, at least one school, and, of course, the Board. General opposition and criticism of specific portions of the rules came from theological seminaries, (See Section 7, supra) and various organizations which were not exempted from coverage of the rules or which felt the rules substantially duplicated Minn. Stat. Ch. 141 and rules promulgated thereunder.

As examples of support, the Examiner would refer to the testimony of Mr. Richard Oakes, Dean of the Hamline University School of Law (T. 53-54), Mr. Richard Boltuck, representing the Macalester College Student Government, the Macalester Local Board of MPIRG, and the State Corporate Board of MPIRG (T. 140-141), Mr. Larry McGuire, a student (T. 119-120), and Mr. Charles Leer, also representing MPIRG (T. 137, 140).

Substantial criticism of the rules was also received, some of which will be dealt with in discussing specific rules. The Examiner must note, however, the comment of Mr. Rollin Crawford, representing the MAPVS, who pointed out that there are some practical business considerations involved with these rules. ". . . It

appears that there is running through them generally, a bias of sorts in favor of the academic or college and university-type institutions. We would submit that this kind of a bias is not necessarily applicable to vocational institutions or those which are proprietarily held and operated for profit." (T. 123-124) Although no examples of such bias were specified, the Examiner recommends that the Board review the rules to determine if such bias exists and, if so, if it is detrimental to the purpose for which the rules are intended.

11. Reference is frequently made to Exhibit 13 which consists of suggested changes in the proposed rules. These changes were offered at the hearing by Mr. Harvey Stegemoeller, Executive Director of the Minnesota Private College Council (T. 133) without much rhetorical support but with the obvious merit of careful consideration and preparation. Although little attention was given to these suggestions during the hearing, the Board expressed general acceptance of them. Mr. Hawk stated for the record, "It does not appear to us that these proposed changes in language do violence to the intent of what has been proposed by the agency. We do agree, at least in some instances, that they may clarify and make more understandable what was initially proposed." (T. 134)

The Board noted, subsequent to the hearing, that the suggested changes offered by Mr. Stegemoeller "are workable and would represent a reasonable clarification of the procedures consistent with our general intent," and urged the Examiner to "give serious attention to the suggestions." (Ex. 19, p. 1) The Examiner has attempted to do so in these Findings.

12. HECB 901, as proposed, is essentially a restatement of the purpose of the Act and the rules as found in section 1 of the Act. In the introduction to its Statement of Need (Ex. 9), and in its introductory remarks at the hearing (T. 14-24), the Board focussed on (a) local and national trends in protective legislation for education, and (b) distinctions between the purpose(s) of the rules and accreditation.

A review of the testimony of the Board indicates that the Board takes a very broad approach in interpreting the legislative

purpose of Chapter 201. (See also Section 57, infra) The purpose of the rules, however, is not particularly clarified simply by restating the statutory language (although such restatement would not be faulty or misleading). The purpose of the rules appears to be enunciated more clearly in the language suggested by Mr. Stegemoeller.

> "The purpose of this chapter is to provide for the registration of private post-secondary institutions and the approval of degrees to be granted and names to be used, under Minnesota Session Laws, Chapter 201 (1975)." (Ex. 13)

Mr. Richard Boltuck sees the suggested changes offered by Mr. Stegemoeller as an attempt to eliminate reference to the "legitimate and authentic" concept. Without specific objection to the approach taken by the suggested changes, Mr. Boltuck points out certain anticipated effects of the adoption of such suggestions. He notes that Mr. Stegemoeller's proposal "would eliminate reference to 'protection for persons choosing private institutions and programs' in HECB 901. I believe such a change would, in fact, alter the putative purpose of the regulations, and is thus not benign or acceptable to students who desire such overt protection." (Ex. 16, pp. 2-3)

The Examiner finds that Mr. Boltuck's concern is not well founded as directed at HECB 901, and finds that the language suggested by Mr. Stegemoeller would improve and clarify the stated purpose of the proposed rules. Such rule is both reasonable and necessary to understand the reason for which the rules are promulgated and to provide reference to the statutory authority for such rules.

13. HECB 902 provides definitions of terms used in the proposed rules. HECB 902(a) is necessary to clarify references in the body of the rules to the term "Act", and was not criticized. The Examiner observes, however, that the term might better be defined by reference to the codification of the Act in Minn. Stat. §§ 136A.61-136A.71, as may be amended from time to time.

14. HECB 902(b) is necessary to "clarify the process of registration. This definition sums the process required of schools pursuant to section 3, section 4 and section 9 of the Act." (Ex.

9, p. 4) It is apparent from the record that such a definition is reasonable to eliminate or minimize the confusion which exists regarding the distinction between the Board's functions in "registration" [HECB 902(b)] and "approval" [HECB 902(i)]. (See Section 20, infra)

The suggested change offered by Mr. Stegemoeller does nothing to lessen the confusion. What the Board considers "approval" is viewed by others as registration for the purpose of conferring degrees and registration for the purpose of using the terms "academy, institute,college or university." (T. 28-29)

A question was raised as to whether the definition of "registration", by its reference to other parts of the Act and rules, implied that the Board has the power to reject applications for registration. Specific reference was made in this regard to section 3 of the Act which states, "All schools located within Minnesota shall register annually with the [Board]." (T. 30-31) Dr. Laird's response for the Board reiterates the distinction noted in this section as well as clarifies the Board's position regarding the specific question.

> "In these proposed rules, there is no intent to imply that the Board has the opportunity to reject registration, in fact, our interpretaion of [HECB] 902(b) and [HECB] 902(i) is that all schools must register. The powers of approval are set forth in the Act, and it's been our purpose to separate [HECB] 902(b) and [HECB] 902(i) to so designate the difference between actions which are statutorily provided for the Board." (Emphasis supplied) (T. 31)

Questions and suggestions regarding fees were also noted during the discussion of HECB 902(b). This subject is covered in Sections 54 and 55, infra.

15. HECB 902(c) is needed to define the term "school" as used throughout the rules. It is reasonable as a verbatim repetition of "the definition in section 2, subdivision 3 of the Act except for the addition of the words 'or advertising' at the end of the definition which were added to prohibit schools from using one of the delineated terms to describe the institution in advertising while at the same time being prohibited from using the term in their names. Without this provision, schools would be able to call themselves by one term . . . in advertisements, when their letterhead

and official documents referred to [a different] official name. . . ." (Ex. 9, p. 4)

The discussion of this rule focussed on whether the definition was adequate to eliminate any question about which institutions or programs fall within the purview of the rules. The Board responded to most of the comments and suggestions on the record and acknowledged that the difficulties involved with the definition of "school" require further review and correction (T. 43-44). In view of this statement by the Board, even though the Examiner finds the proposed rule to be needed and reasonable, it is recommended that the Board review the comments in the record and devise a definition which is more specific. It should be pointed out that such a change would likely constitute a substantial change and, as such, require a public hearing prior to its adoption.

16. The definition in HECB 902(d) of "schools located outside Minnesota which offer programs or courses within Minnesota" is not reasonable, although some definition of the phrase is necessary. Critics of the proposed rule stressed that the defined phrase exceeds the Board's statutory authority and would cause discrimination in the operation and application of the rules. A further shortcoming of the proposed rule is its ambiguity.

No meaningful support for this provision is offered by the Board in its Statement of Need. Dr. Laird did state that the definition "is written for the purpose of being sure that those schools which provide services to the residents of our state. . . come within the purview of these rules, but that those institutions which merely come to this state to recruit or discuss with students the possibility of those students going to another state for the purposes of completing a substantial portion of their programs, would not come within the purview of the rules." (T. 54-55) He also noted that agencies of other states which perform a similar function to the HECB have discussed such regulations in an attempt "to be sure that we do not unnecessarily add to the burden of those institutions who wish to be active in more than one state." It is the Board's position, however, "that each state must face the burden

of providing those protections and that assistance which it deems necessary for the citizens of the state or whatever institutions are operating within their state boundaries." (T. 64) Such statements are not sufficient to be considered an "affirmative presentation of facts" showing the reasonableness of the proposed rule.

17. HECB 902(e) is a repetition of the statutory definition of "degree" found in section 2, subdivision 4 of the Act. No comments were offered relative to this rule, and the Board stated, "Our purpose in this definition is not to include those programs or courses which lead to certification and particularly those which would normally come under the purview of Minnesota Laws [Chapter] 141. The purpose there is to, to the fullest extent possible, reduce overlap and dual regulations for those institutions and programs that come under both statutes." (T. 72-73) The rule is reasonable and necessary for that purpose.

18. HECB 902(f) is also a verbatim reproduction of the definition of "records" which appears in the Act, with the addition of a clarifying sentence specifying that each student's transcript will qualify as "records". This provision was supported by the MPIRG local board at Macalester College and encouragement was offered to extend the definition to include "written comments of administrators, faculty and other school personnel relating to individual students, whether of the nature of academic evaluation or otherwise." (T. 74; Ex. 16, p.1) The implementation of such a suggestion would constitute a substantial change requiring additional hearing. As proposed, it is found to be needed and reasonable.

19. HECB 902(g) and 902(h), providing definitions of "authentic" and "legitimate", respectively, are necessary in order to provide some linguistic points of reference to understand the purpose for and criteria set out in the rules. The definitions used are taken from respected dictionary sources and, as such, are reasonable. The Examiner finds that the Board's reasoning (T. 88-89) supports the inclusion of the definitions, and that they do not imply or add any standards to those set forth in HECB 908.

20. HECB 902(i), the definition of "approval", was changed at the hearing to read:

HECB 902(i) "Approval" means: determination by the Board that a school meets minimal requirements to offer specified degrees or to use the terms "college", "academy", "institute", or "university" in its name, or both of the foregoing pursuant to section 5 of the Act, HECB 905 and HECB 906. (T. 76; Ex. 8)

A definitional rule is necessary and reasonable "to clarify the separation of the process from that of approval of degrees and names and to make clear that the use of the term 'approval' is concerned only with the granting of degrees and the use of terms in school names." (Ex. 9, p. 5) It is questionable, however, whether HECB 902(i) and the rules associated with approval standards or criteria do, in fact, clarify the separate processes. (See Section 14, supra)

Comments associated with this proposed rule highlighted the difficulty in distinguishing between a "simple registration," registration for approval to confer degrees and a registration for use of one of the four terms in a school name. As explained in the record, the problem is that for a school to simply register and be deemed legitimate and authentic and be published as a registered school, such school must meet the requirements of HECB 908. HECB 908.06, .07 and .08 are criteria for those institutions which wish to confer degrees. There are schools that wish to register simply to be deemed legitimate and authentic, yet they must meet the criteria which are for degree-granting institutions. The problem is that the rules establish criteria to determine "legitimacy" and "authenticity" and are not specifically addressed to criteria for degree-granting approval or for the use of a regulated school name. (T. 79-80)

The Board's explanation of its interpretation of how the rules would operate in the granting of approval for degrees and names (T. 78-79) is helpful in understanding the distinction between "registration" and "approval". Such explanation, however, does not sufficiently clarify the proposed rules when read without benefit of interpretation.

Based upon the foregoing, a definition of the term "approval" is found to be both needed and, if clarified as noted above, would be reasonable. It does not appear that the addition of such clarifying language would be a substantial change.

21. HECB 902(j) is reasonable to clarify references in the rules to the term "Board". That term is a necessary substitution for "commission" as "required by the statutory change in the name of the Minnesota Higher Education Coordinating Commission to Minnesota Higher Education Coordinating Board in accordance with Laws of Minnesota 1975, Chapter 271." (Ex. 9, p. 5)

22. HECB 902(k) defines "Executive Director" as used in the proposed rules and, as such, is necessary for clarification purposes.

23. HECB 903 is essentially a restatement of section 3 of the Act with the affirmative statement that the Board is exercising its authority to require registration of schools located outside Minnesota which offer programs or courses within Minnesota. No comments or criticisms were addressed to this rule.

The provision is reasonable and necessary as a mandate for registration. The Examiner notes that the word "of" appears in the phrase "schools located outside of Minnesota" in HECB 903 but not in the definition in HECB 902(d) or in the Act. To insure that there is no confusion, it is suggested that the extra word be deleted.

Mr. Stegemoeller's suggestion (Ex.13) to include in HECB 903 a provision for the Board's adoption and publication of a list of registered schools similar to the provision contained in proposed HECB 908, would not be a substantial change and would be reasonable.

24. HECB 904 is necessary as a delineation of the information which must be contained in applications for registration or approval. The rule is also reasonable as establishing the means for obtaining the material for the Board to make its judgments regarding HECB 907 and 908. The reasonableness of the various parts of HECB 904 do, however, depend upon the reasonableness of the criteria set out in HECB 907 and 908. If the standards are unreasonable, requiring information relative thereto would likewise be unreasonable. (HECB 907 is considered in Section 27, infra; HECB 908 is considered in Sections 28 - 49, infra.)

Note is taken that two changes were made in HECB 904 at the hearing: (1) The word "and" was changed to "or" as it appears in the first line of the rule (T. 219; Ex. 8); and (2) the phrase "school or" was inserted in HECB 904(d) after the word "any". These changes are not deemed to be substantial. The rule also reasonably supplements section 4 of the Act by including "visitation" as a method of verifying the accuracy of information submitted.

Specific support for adoption of HECB 904, as well as HECB 906, 907 and 908 was offered by MPIRG. (T. 139) A general criticism of the rule was also expressed by Mr. Crawford.

> ". . . The provisions of HECB 904 suggests that the information to be submitted when an application is made for the purposes of having the approval of names or for determining annually, if such institution is authentic and legitimate. Nowhere in the rules do we find comparable directions for submission when and if an institution is desirous of receiving approval for a degree-offering. The question we have is what process or exhibits does an institution, independent of the annual registration submission, provide if, between annual applications it seeks approval to offer a new or additional degree." (T. 126-127)

The Examiner agrees that it is unclear what must be submitted for registration as opposed to approval of a degree (see Section 20, supra), and suggests that the Board develop a more precise explication of what is necessary for registration or approval.

Mr. Boltuck raised a question about whether the documents which are filed with the Board are available for public inspection and whether copies of such documents could be acquired for the cost of photostatic reproduction. (T. 144) The Board did not indicate what the cost, if any, of document reproduction would be although it may be assumed that the Executive Director would set the fees under HECB 914. Whether such fee is the exact "cost of photostatic reproduction" is left to the Executive Director's discretion. (See Ex. 16, p. 2, regarding a specific suggestion for a provision for photoduplication of information.)

The provision regarding public inspection of the documents received by the Board was addressed in the Statement of Need.

> "In passing Minnesota Laws 1975, Chapter 201, the Legislature established a regulatory scheme in which the Board, a body which, by its very nature must conduct its business in meetings open to the general public, approves the registration of schools. That Act provides for no exemption from the Minnesota Open Meeting Law, Minnesota Statutes § 471.705 (1974), or

from the Public Records Statute, Minnesota Statutes § 15.17 (1974), thereby indicating that the Board should provide no such exemption. Materials submitted to the Board for the purpose of registration and approval would be public information even without the explicit statement to that effect in HECB 904. Naturally, HECB 904 must be read in conjunction with other statutes mandating privacy safeguards for various types of documents." (Ex. 9, p. 5)

Specific comments were directed to some of the subdivisions of HECB 904. Mr. Boltuck urged that HECB 904(a) be changed to require the filing of all the enumerated documents (by substituting "and" for "or" in the rule). "As it stands now, any one of these would suffice for the purpose of the filing, and I believe that the essential filing requirement is of great benefit to anybody checking for themselves what constitutes formally the institution, and consequently, the filing should be as reasonably comprehensive as an institution can make it." (T. 141-142)

Regarding HECB 904(e)7, he strongly requested the expansion of the rule to include "in addition to the requirement for a statement pertaining to freedom of expression and inquiry, a statement pertaining to the intention of the institution to provide procedural safeguards and due process in internal disputes between members of college component constituencies." (T. 142) Such provision would be designed "to allow for internal resolution of controversies which arise within a school community, without reort to formal legal procedures in the courts. (T. 142-143; Ex. 16, p. 2; see also, Sections 34 and 39, infra, relating to HECB 908.09.)

Another suggestion offered by Mr. Boltuck is "that specific and precise recognition be given to the fact that students are also renting housing and board from the college . . . and consequently, the question of fees and deposits with respect to those two commodities should be given more specific recognition." (T. 143) To that end, Mr. Boltuck would expand HECB 904(e)9 to "include a precise statement of fee policies relating to room and board." (Ex. 16, p.2)

The suggested changes do not appear to be unreasonable and merit consideration by the Board. Whether any action taken by the Board pursuant to such suggestions would result in a substantial change would be determined upon review of such action.

The provision for a certified audit in HECB 904(f) was criticized by Mr. Crawford as being a burden on members of the MAPVS. (T. 126) This requirement, although not specifically supported at the hearing, "is needed for the Board to determine if a school meets the criteria of HECB 908.03, 04 and .05." (Ex. 9, p. 6) It appears to be reasonable for that purpose and would not unduly burden a legitimate business.

A question was raised with regard to the use of the word "will" in the last sentence of HECB 904 (as opposed to "may"). Dr. Laird indicated that the use of the word "will" was used as "an affirmative statement that the Board would not attempt to make judgments based upon insufficient information. . . ." (T. 221) Such provision is necessary if the Board is to make sound judgments based on all relevant information.

Mr. Stegemoeller's suggested changes for HECB 904 (see Ex. 19), are generally reasonable as an attempt to eliminate extraneous material or verbiage. He suggests eliminating the phrase "as a basis for the review by the Board," in the second paragraph of the rule. That language could be eliminated without loss of clarity. Similarly, the deletion of HECB 904(c) in its entirety would do no harm to the rules and avoid the confusion of an ambiguous requirement. The deletion of the phrase "and its programs or to approve degrees or names," as it appears in the last paragraph of the rule would, however, limit the purposes for which the Board might request additional information. Such change could, therefore, thwart the stated purpose of the rules and should not be made. The suggested substitute language for HECB 904(e)8 impresses the Examiner as a more concise statement of the type of fees and charges which the Board desires to know about. If, however, the Board decides to retain the originally proposed language, it is suggested that "up-to-date" be changed to "current" as was done in HECB 908.10.d.

25. Proposed rule HECB 905 is designed to define standards for approval of degrees. Some confusion and concern was expressed at the hearing about the fact that the criteria for degree approval are some of the same criteria used in HECB 908 for determination

of a school's legitimacy and authenticity.

Part of the confusion as to standards for degrees might be eliminated by changing "degree" as it appears in the second line of the rule, to "school." This would clarify that HECB 908 refers to schools (in the determination of legitimacy and authenticity) and also that the degree will be measured specifically against the particular standards of HECB 908.06, .07 and .08. (See Section 36, infra)

It is clear that a school which is not designated as legitimate and authentic will not receive the Board's approval to grant any degrees. To be so designated, the school must meet all the requirements of HECB 908. It remains unclear, however, from the construction of HECB 905 that "the application of HECB 908.06, .07 and .08 will vary according to the level of degree, the nature of the degree which is proposed to be offered." (T. 223) By the same token, the rules do not specify that the Board might issue an approval which is limited to certain degree programs or that if a school has a non-degree program, the Board might issue an approval as to the school's legitimacy and authenticity but not as to the approval of a degree. Clarification of these matters should be made in the rules to insure understanding and compliance by applicants for degree approval. Without such clarification, the rule does not appear to be reasonable.

The language of the third sentence, although understandable, may be clarified by restating the availability of conditional approval of degrees in the affirmative. Possible substitute language would be, "The Board may give conditional approval under HECB 911 for degrees which do not meet the requirements of HECB 908.06, HECB 908.07 and HECB 908.08."

The question of whether this rule would be unconstitutional as applied to religious seminaries was not specifically discussed. If the Board excepts religious seminaries from the rules, it is suggested that such exception be noted in HECB 905 for religious degrees. (See Ex. 19, regarding such a proposed exemption.)

Mr. Price's comment about the unreasonableness of allowing schools to grant degrees to students who leave Minnesota to complete

a "major portion" of the program (See Ex. 24, p. 4) must also be considered. The Board did not present any specific testimony to support the need for or reasonableness of this provision.

The suggestion of Mr. Stegemoeller regarding HECB 905 (Ex. 13) expands the proposed rule to include additional requirements for degree approval. The same criticisms addressed to the original proposal are apposite to the suggested substitution. The suggested addition of adoption and publication of schools approved to offer degrees and a list of the approved degrees is similar to the Board's proposed provision for such a list in HECB 908. (See Section 29, infra.) Mr. Stegemoeller's rule would specify that a separate list relating to degrees be published in addition to a list of registered schools (See Section 23, supra, and Section 26, infra.) There was no testimony offered supporting the reasonableness or necessity of the proposed changes, but they do not appear to the Examiner to be unreasonable. If adopted by the Board, however, it would have to be shown that the changes are needed and that they do not constitute a substantial change. They could not be adopted based upon this record.

26. HECB 906 is proposed to carry out the mandate given the Board in section 5 of the Act. The rule distinguishes the four terms specified in the Act and establishes minimum requirements for the use of each term in a school name.

MPIRG supported the regulations relating to the awarding of degrees as an attempt to standardize confusing and possibly conflicting usage. (T. 137) Similar support was offered by Mr. Allen Held of the Consumer Protection Division of the Attorney General's office. (T. 215)

The rule was not, however, without its critics. The MAPVS mentioned its general concern about the effect of HECB 906 on the private vocational school industry. (T. 125) Mr. Crawford also stated his opinion that the Board did not fulfill its obligation to show the need for and reasonableness of this rule. (T. 123)

The Examiner disagrees with Mr. Crawford. The Act requires regulation of schools using the specific terms. The agency must, and has, developed rules to regulate such usage and has shown why

it feels they are needed and reasonable. (See Ex. 9, p. 7) It has also admitted that there is room for improvement and is willing to revise the rules to make them more accommodating to unusual or unique situations. The Examiner believes that by revising the rules to incorporate suggested changes, where appropriate, the Board will have fulfilled its obligation. Naturally, if some of the changes are substantial, further hearing will be held to determine the reasonableness of such changes.

No criticism was expressed regarding HECB 906.10. With regard to HECB 906.20, Mr. Devine stated his concern about the use of the word "institute" as it applies to accounting institutes and insurance institutes, such being short but intensive training sessions. (T. 36) For the Board, Mr. Hawk clarified that such "workshops" would not qualify as post-secondary institutions. The Board believes, "It is not the intent of this legislation to create a situation in which an association would be required to register in order to do something of an educational or semi-educational nature for the members of that association." (T. 37)

It appears to the Examiner that HECB 906, and indeed all of the proposed rules, are directed to regulation of permanent institutions with on-going courses or programs which require some substantial time to complete. If this understanding is incorrect, the rules, particularly HECB 906 and HECB 908, should be modified for clarification.

HECB 906.30 sets out the criteria for use of the term "college." The term "university" is dealt with in HECB 906.40. Facts were presented by the Board to demonstrate the need for and reasonableness of these provisions. The rule was questioned as to its application to "Bible colleges." Ms. Kelley pointed out that if a Bible college grants a degree, it would meet the requirements of HECB 906.30 (and thus be subject to the requirements of the other rules). (T. 205) Amending the rules to provide an exemption for religious schools, as indicated in Section 25, supra, would apparently change Ms. Kelley's response and eliminate any question.

Mr. Hatanpa questioned the adequacy and reasonableness of HECB 906.30 and 906.40 (T. 224-226). His concern merits consider-

ation by the Board, and the Examiner suggests that it be determined whether a real problem exists because of the minimal requirements of those rules.

HECB 906.50 provides for limited exceptions to the use of the term "college." The rule, as proposed, was adequately supported in the Board's Statement of Need (Ex. 9, p. 8), but was criticized as being (a) discriminatory, (b) beyond statutory authority, and (c) unconstitutional as (1) an interference with interstate commerce, and (2) denial of due process in taking a proprietary interest.

The rule was considered discriminatory because exemptions are limited to institutions using "college" in association with "beauty," "barber" or "business." (See Ex. 24, p. 4.) No provision is made for a "business university," "barber academy," or "beauty institute," and no difference was established between such terms and those exempted in HECB 906.50.

Strong objection was also noted regarding the failure of the rule to exempt the schools using the term "university" in conjunction with the three terms specified in the rule. (See e. g., T. 241; Ex. 23, p. 9; T. 201; see also, T.38-39, 41, 47 and 205.)

The Examiner makes no findings as to whether HECB 906 is ultra vires because such determination is beyond the Examiner's jurisdiction. Arguments and comments regarding the Board's possible extension beyond its statutory authority and the unconstitutionality of the rule may be found, inter alia, at T. 101, 126, 201-204, 234-240, and Ex. 23, pp. 5-7. Although much of the criticism of this rule was offered by Mr. Greenman, the Board affirmed that it was determined that the provisions of HECB 906.40, in connection with HECB 905, would not preclude his client, LaSalle Extension University, from using the name "university." (T. 245-246)

The suggestions for HECB 906 offered by Mr. Stegemoeller impress the Examiner as providing some added clarity to the rule. (See Ex. 13) The first sentence of the introductory paragraph of Mr. Stegemoeller's suggested rule is essentially the same as the second sentence of the proposed rule. The suggested rule deletes the first line of HECB 906 and thereby eliminates the affirmative statement that "the Board shall approve "schools which meet the

rule's criteria. It is the opinion of the Examiner that such affirmative statement should be retained.

Mr. Stegemoeller would also specify that a separate list of schools approved to use the four terms be published annually. Such a list could be published separately or as part of a combined list under proposed rule HECB 908, and the Examiner believes the Board should have discretion as to how the list should be published if, indeed, it should be published. (See Sections 23 and 25, supra and Section 29, infra.

The elimination of the specification that a school meet the requirements of HECB 905 clarifies HECB 906 (and the rules in general) by its indication that approval of degrees and approval of names are separate and distinct functions of the Board. The addition of the language relating to HECB 905 in HECB 906.10, .20, .30 and .40 would not, in the Examiner's opinion, be a substantial change and would be reasonable for clarification purposes.

27. HECB 907 is reasonable and necessary to assure the preservation of school records relating to student academic activity and performance as shown by facts affirmatively presented by the Board. This rule comports to legislative direction under section 8 of the Act and was generally supported at the hearing. (See e. g., T. 138, 143)

It is unclear from testimony at the hearing whether each school must maintain two separate records under HECB 907(a), i.e., the original and a copy or simply the original (which would constitute a "copy" for purposes of fulfilling this requirement.) Dr. Laird thought it would be unusual for an institution to have only the original of a transcript available, but it would be possible under the rule for that situation to exist. (T. 250-251) The Examiner suggests that some clarification be made to the rule to establish the Board's position as to what suffices for a "copy".

MPIRG suggested that HECB 907(b) "be broadened to include a requirement that students be provided with a statement of where records are kept and procedures for obtaining them." (T. 138) A similar suggestion by Mr. Boltuck was that the rules "require a written and annually distributed policy statement to faculty and

students concerning the procedure, consistent with federal law, for accessing one's own records." (Ex. 16, p. 2) Such a requirement might be considered as a substantial change requiring hearing.

Regarding HECB 907(c), Mr. Leer raised the question as to whether a school must provide a custodian of student records should the school cease to exist. (T. 138-139) No specific answer was provided to the inquiry, but the implication from other related discussions was that, under HECB 907(d), it would not be necessary to have such a custodian.

HECB 907(d) is designed to ensure the preservation of student records after a school ceases to exist. Dr. Laird mentioned that the intent of the requirement allowing for a "binding contract", is to allow a formalized arrangement for the preservation of those records and the management of those records in addition to either a bonding or trust arrangement", such binding contract to be between a particular institution and a legally related affiliate. (T. 249-250) Mr. Price pointed out that it may be advisable to change the language of 907(d), particularly as it relates to "binding contract" because of the problem of an educational institution which operates as a division of a corporation. It is difficult for a division of a corporation to enter into contracts with that corporation because it would be contracting with itself. (T. 251)

Mr. Greenman raised the question about retention of records for out-of-state schools and whether the Board would accept whatever storage arrangements are required of such out-of-state schools in the state of domicile. In response, the Board noted that its concern was for the records of Minnesota residents and that it might be possible to limit its record-retention requirements to such residents. The Board also noted that it would consider phrasing the rule in such a way to allow Board discretion as respects record-retention where the state of domicile does, in fact, require adequate record-retention. (T. 249)

The Examiner notes that the date of retroactivity in the proposed rule (August 1, 1975), might be considered unreasonble in view of the fact that the rules cannot become effective until March 1, 1977. Schools currently operating without the benefit of the

guidelines of the rules would perhaps be hard-pressed to comply with such provisions after one and one-half years. The Board has not demonstrated that it has statutory authority to adopt a rule having retroactive effect.

28. HECB 908 establishes the policies and standards of the Board which a school must meet in order to be deemed legitimate and authentic. That designation, in turn, is the basis for approval of degrees and the use of any of the four terms in a school's name. Understandably, a great deal of attention was devoted to this rule in an effort to determine its necessity and reasonableness.

There is no question that section 10 of the Act directs the Board to establish rules "to carry out the purposes" of Chapter 201. The Examiner also finds that there is a necessity for the rule; without it, there would be no standards against which a school could be evaluated nor would an applicant school know what is expected of it. Indeed, without some criteria, the Board's activities would have to be considered arbitrary and potentially discriminatory.

The primary question for determination is the reasonableness of the rule -- its subparts and in general. That is not to say that parts of the rule are not to be examined as to their necessity. Where questions of need and reasonableness are raised, the rule must be scrutinized in detail.

29. The first paragraph of HECB 908 mandates that the Board shall adopt and publish a list of registered and approved schools. The Board claims that such a list "is one of the means by which the Board may provide assistance and protection for persons choosing private institutions and programs as mandated by the Legislature in section 1 of the Act." (Ex. 9, p. 9)

As noted by Dr. Laird, "Under [the procedure set forth in HECB 908], there can conceivably be three different lists adopted and published by the Board: a list of registered schools which have been judged as legitimate and authentic, a list of schools approved to offer specific degrees, and a list of schools approved to use the specific terms in their names. I think, in actual practice, it is more likely that the Board will issue a combined list,

. . ." (T. 78)

The Examiner finds that publication of such lists, whether combined or separately, is both reasonable and necessary for the purpose of informing the public of the Board's judgment as to which schools meet the criteria established for being "legitimate and authentic." In so finding, the Examiner is not unmindful of the comments and criticisms of this first paragraph. (See T. 80-81, 151-152 and Ex. 24, pp. 2-3.) They were all considered and rejected.

30. The second paragraph of HECB 908 was criticized for the generality and ambiguity of the language used. In particular, Mr. Markert questioned the meaning and interpretation of the terms "genuine educational program," "sufficient finances," and "sound institutional policies and practices." (T. 92-94) Those terms appear in the first and last sentences of the paragraph and were intended to state "in general terms the standards used by the Board to determine the legitimacy and authenticity of the broad range of degrees and schools required to register by the Legislature. These standards are developed in detail in the subsections of HECB 908." (Ex. 9, p. 9)

The Examiner must agree with Dr. Laird's statement in response to comments about ambiguous terms.

> ". . . It seems to me that any time you adopt any written rules, for anything, you have definitional problems. We all know that the English language is not among the more precise available, and any rule, any law, any guideline is always going to suffer from the ability of others to contend that it is either imprecise or ambiguous." (T. 85-87)

For that reason, the Examiner finds that the language used is reasonable.

Notwithstanding, the reasonableness of the language, it is the Examiner's opinion that the first sentence of the second paragraph of HECB 908, by its ambiguity, may cause confusion as to the criteria listed in the subsections of the rule. To eliminate such possible confusion, it is suggested that the first sentence of the paragraph be deleted.

The third and fourth sentences of the paragraph are necessary, according to the Statement of Need, "to prevent the disapproval of

school applications when it has been deemed slightly insufficient in one or two less vital areas while meeting the standards essential for sound education." (Ex. 9, p. 9) Because such provision deals with an exception for schools which fail to meet all the standards of HECB 908, the Examiner suggests that it is more appropriate to be located at the end of the rule instead of at the beginning. The remaining second sentence of the second paragraph could then be slightly revised to indicate that the subsections "provide criteria by which a school's authenticity and legitimacy are to be measured." (T. 138)

It is noted that the word "among" was deleted from the beginning of the second sentence to eliminate any implication that there are criteria which are supplemental to the 12 points enumerated in HECB 908. (T. 160) Also, a comma was added after "educational program" as it appears in the last sentence of the second paragraph. Neither of these changes are deemed to be substantial.

31. The Examiner agrees with the Board that HECB 908.01 is reasonable and necessary to assure that each school has developed a statement of mission and goals which is necessary as a foundation for its programs and activities. Continuity between this statement of mission and goals and the school's activities are assured by a charter, by-laws, or operating procedures which reflect that mission and identity. (Ex. 9, p. 9) This rule was not criticized or commented on at or after the hearing.

32. HECB 908.02 is similarly reasonable and necessary for the reasons stated by the Board, to-wit: "(a) the Board must be able to identify the authority responsible for the school and its programs in order to register it pursuant to section 3 of the Act; (b) students should be able to identify the responsible authority in cases of questions concerning their academic or financial position vis-a-vis the school; and (c) a school must be adequately administered in order to have sound educational practices and programs." (Id.)

This portion of the rule was not seriously criticized except for purposes of clarification. It was noted that "publicly identified personnel" is construed by the Board to mean those personnel

responsible for administering the institution and indicated as such in the school's documents. (Being listed as administrative staff in a school's general catalogue would suffice for this.) The Board agreed that substitution of the term "faculty and administrators" or something like that for the term "personnel" would be more clear. (T. 164) Such substitution would not constitute a substantial change in the rule.

33. The Board asserts that HECB 908.03 is reasonable to assure "that students understand how some of their fees are expended in relation to their program. The compensation of Board members is one point of potential abuse by both profit and non-profit institutions. This provision provides protection against occasions where institutions might compensate Board membesr for more than normal expenses and honoraria as a means of an indirect distribution of profit or unallocated income." (Ex. 9, p. 10)

However, as Mr. Greenman pointed out, it is not a common practice among private colleges and universities to publish figures regarding compensation of Board members or to disclose them to anybody except the Internal Revenue Service under the secrecy that pertains to tax returns. "I don't see that it can be considered prevailing practice or generally accepted standards if that is to be required of every post-secondary educational institutions or that an institution is not legitimate if it doesn't do that." (T. 177-178)

Based on the record, the Examiner finds that the Board has failed to substantiate either the need for or reasonableness of this provision and recommends that it not be adopted.

34. The Examiner finds that it is reasonable and necessary for the Board to consider a school's financial condition as provided in HECB 908.04 because: "(a) legitimte and authentic educational institutions must be able to meet their financial obligations to support adequate programs, and (b) students and creditors must be protected against a loss of fees or assets in the case of closure or termination of programs." (Ex. 9, p. 10) The Board noted that "the language of HECB 908.04 is taken almost verbatim from the language of Minnesota Statutes, section 141.25,

subdivision 7(a) (1974) mandating the financial soundness amongst schools subject to that statute." (Id.)

The need for expansion of HECB 908.04 or the addition of other provisions in the rules to allow for such problems as related by Messrs. Held (T. 214-215) and McGuire (T. 115-121) is, in the Examiner's opinion, worthy of the Board's consideration. Obviously, no finding may be made regarding the reasonableness of such an amendment without examination, although it is probable that such provision would constitute a substantial change requiring public hearing.

35. HECB 908.05 provides a general standard for schools' accounting and budgeting procedures. The Board's statement in support of the rule asserts that it "is needed to implement HECB 908.04 and to provide a clear picture of the school's financial status for sound internal planning, development, and fiscal management and for others to understand the school's financial status. . . . The source of the standards recommended in HECB 908.05 is a professional association of responsible educational business officers. It should be noted that these standards are only recommendations; schools are free to use other acceptable procedures." (Ex. 9, p. 10) The fact that the particular standard cited in the rule is strictly a recommended standard was reiterated at the hearing. (T. 165) This rule is reasonable and necessary for the reasons stated by the Board.

36. HECB 908.05 is a standard designed to insure that a school has some structured program or course of study directed to a specified goal (such as a degree). As proposed by the Board,

> "The need to adopt HECB 908.06 arises because educational programs and degrees should meet minimum requirements for public recognition of the authenticity and legitimacy of the programs and degrees granted. Not all schools offering programs or granting degrees support those programs with adequate curricular offerings or requirements for the field or the level of the degree; consequently, schools with adequate programs operate at a competitive disadvantage to schools without adequate curricular offerings." (Ex. 9, p. 10)

HECB 908.06 was criticized as being too vague. (T.94) The Examiner does not find the rule to be particularly vague. (See Section 30, supra.) Indeed, Mr. McGuire's testimony (T. 117-118)

emphasized the need for a school to have a "clearly defined sequence of learning experiences."

Further criticism of this section of the proposed rules, as well as HECB 908.07 and HECB 908.08, related to the fact that these sections are the same standards used in HECB 905 for approval of degrees. (See Section 25, supra.) Mr. Hatanpa accurately observes that the criteria established by these three sections must be met in order for a school to be deemed legitimate and authentic. (T. 79-80) They are not specifically "degree granting criteria." Dr. Laird's response that the three sections in question "would mean different standards according to the degree . . . the institution wished to offer or according to the different names the institution was seeking approval to use," (T. 80; see also T. 222-223) re-enforces the position that more specific or supplemental standards are necessary for the determination of legitimacy and authenticity under HECB 908. In the alternative,it may be possible to specify in the rules (probably in HECB 904 and perhaps also in HECB 906) that HECB 906.06, .07 and .08 will be applied differently to schools, depending upon the type of registration and/or approval they are seeking.

Subject to the caveats implicit in this section, HECB 908.06 is found to be reasonable and necessary as a standard for determining a school's legitimacy and authenticity.

37. HECB 908.07 is reasonable and necessary to assure students and prospective students that the school's courses are consistent with the school's stated objectives. The Board's Statement of Need reflects the necessity for this rule.

> "The need to adopt HECB 908.07 arises because a school's missions and goals and educational program and curriculum can be developed independent of one another; thus, the statement of mission and goals by the administration and the programs and curriculum by the faculty may not support one another. For example, without this provision, a school with the goal of training computer technicians may decide to launch a program in community counseling without reviewing the change in the school's purpose or mission that this would necessitate. The student should be assured that the school's statement of missions and goals reflect the educational opportunities and programs offered by the school." (Ex. 9, p. 10)

The reservations stated by the Examiner in Section 36, supra, apply equally to HECB 908.07.

38. As a standard for determining the legitimacy and authenticity of a school, HECB 908.08 is found by the Examiner to be reasonable and necessary. A school must have qualified faculty and reasonable facilities and resources to provide the courses and programs it purports to offer. The Examiner accepts as fact the Board's statement that "some schools now offer programs with unqualified staff or inadequate facilities which result in degrees which are not recognized as authentic by other academic institutions and by the broader business and social communities. When not all schools support their programs with adequate faculty and resources, schools which are well-staffed and have adequate facilities are at a significant cost disadvantage which then may make them less attractive to students than in adequate schools." (Id., pp. 10-11)

Mr. Markert's complaint regarding the ambiguity of HECB 908.08 (T. 94) is again rejected. It would be extremely difficult, if not impossible, to list each type of facility and/or resource necessary for the many different kinds of schools to have in order to be deemed legitimate and authentic. The Board must be allowed discretion in this area to determine whether a school's facilities are adequate to meet its educational goals and obligations.

Responding to a question about whether the Board would be judging the qualifications of a school's faculty members, Dr. Laird noted that the Board would receive a presentation which would include a list of faculty and a description of the program to be offered. The Board would then determine in a general way whether there is assurance that the school has sufficient faculty resources to support the kind of program which they offer. The Board does not contemplate making individual judgments about specific faculty members within an institution. "That is the duty of the institution, and there wouldn't be any attempt to subvert that." The Board attempts to evaluate the faculty "as a collective resource that the institution asserts is there to support the curriculum," as opposed to an evaluation of the individual faculty members. (T. 166-168)

Mr. Leer suggested on behalf of MPIRG that HECB 908.08 be broadened to include a procedure for evaluation of teachers along

with the requirement that the school have a qualified faculty. "Although professional qualifications serve to identify people who may be good teachers, we feel evaluation is required to insure the information is being imparted in such fashion that student needs are adequately met." (T. 139) This suggestion, if incorporated in the rules, would undoubtedly constitute a substantial change because it would be a major policy directive to the schools.

The reservations stated by the Examiner in Section 36, supra, apply equally to HECB 908.08.

39. HECB 908.09 requires that a school, to be considered legitimate and authentic, have an official policy on freedom of expression for students and faculty. Considering the First Amendment to the United States Constitution and recent interpretations of that and similar provisions by the Federal and State Supreme Courts, this rule appears to be reasonable, although not absolutely necessary.

The Board's statement in support of this standard is that "HECB 908.09 is needed because in order to make sound, rational choices concerning post-secondary education, students should understand the effective parameters for freedom or restraint which may affect the content and conduct of educational programs. For example, a student interested in studying biology should know if a school prohibits the teaching of the theory of evolution." (Ex. 9, p. 11)

Comments concerning this rule were noted, some proposing changes which would be substantial (see Mr. Boltuck's comments at T. 144 and Ex. 16, p. 2). The Board has responded that it will consider such recommendations (T. 169), however, the proposed rule is found to be both reasonable and necessary.

40. HECB 908.10 is intended "to protect and assist students choosing private post-secondary education" by insuring that the school provide them with "accurate and adequate information about the likelihood of admission, readmission if they temporarily wish to withdraw, and success, standards for granting credit for prior education, the total costs for a program, the refund policy, and

the standards of the financial aid program, if any." (Ex. 9, p. 11) The Board asserts that:

> "Only with full information about what is expected of them financially and academically can students make meaningful decisions about education and career planning. Without this information, a student may unknowingly enroll in a program which has a very low success rate or may be committed to a substantially greater expenditure than seemed necessary from the catalog or promotional materials. In addition, most reliable schools already disclose such information and, therefore, they may operate at a disadvantage in a competitive student market. Minnesota Statutes, Chapter 141 (1974) includes requirements for disclosure of similar information to students." (Id.)

The introductory phrase preceding the rule's subsections is reasonable as (a) clarifying that the following information must be "provided to" students and prospective students and (b) stating why such information must be provided (to promote "the welfare and educational advancement of the student"). It was suggested that the introductory phrase is unclear as to whether the following material must be "provided to" or "made available to" students. (T. 175) In the latter construction, the student must make an effort to get the information; in the former construction, the school must make sure the student gets the information. The Board indicated it would examine the language to see if any uncertainty could be clarified. The Examiner believes that the language is unambiguous as originally proposed and that it requires schools to furnish the information without any student inquiry or request. This requirement was supported by Mr. Boltuck with the suggestion that the distribution be made annually. (See Section 39, supra.)

41. The Board proposed HECB 908.10.a. because it feels "students and prospective students should know what proportion of admitted students graduate from a school's program. It is also useful for students to know the likelihood of readmission in cases where they withdraw temporarily, for instance, to work temporarily to pay for education, to help choose the direction of their career plans, to reconsider their choice of educational program, or even to prepare more if they have not succeeded so far in a program." (Ex. 9, p. 11)

Dr. Laird agreed with Mr. Price's statement that "this rule would require every school, subject to the rule, to affirmatively disclose . . . in writing, numbers with respect to retention, graduation and readmission of students." (T. 170)

Extensive comments at and after the hearing were directed to the need for and reasonableness of this provision. Most of the relevant comments related to the fact that no standards nor criteria for developing the statistics are provided and that such statistics are difficult, if not impossible, to ascertain. (See discussion at T. 169-197, 200-201; see also, Ex. 15; Ex. 22(b), (c) and (d), and Ex. 23, p. 10.) Based upon these comments, the Examiner finds that the Board has failed to establish the reasonableness of HECB 908.10.a. and recommends that it not be adopted.

42. HECB 908.10.b. directs schools to have and provide "policies relating to student admission, evaluation, suspension and dismissal." This rule is reasonable to assure that "students have access to policies which determine their success or failure in an educational process. This information should assist a student in making realistic estimates about the process of admission and evaluation, thus minimizing misunderstandings between the student and the school." (Ex. 9, p. 11) There were no criticisms of this proposed rule. It was parenthetically noted by the Board that Minn. Stat. § 141.25, subds. 9(a), 9(f) and 9(g)(1974), require vocational schools to publish in the school catalog or brochure policies concerning standards of progress required of the student, the grading system, probation, re-entrance, and dismissal. (Id.) It is found that the proposed rule is necessary and reasonable.

43. HECB 908.10.c. is necessary and reasonable to advise students and prospective students what prior experience they will receive credit for. The Board's Statement of Need indicates that the lack of this information would deprive students of knowledge of "What is required for the completion of a program." (Id. p. 12) The Examiner observes, however, that the rule does not require information about credit given for courses taken at the school; it refers only to prior experience. In fact, nowhere in HECB 908 is a school required or directed to indicate its policies for the

granting of credit for the courses or programs which it offers, even though such information is to be submitted on its application for registration under HECB 904(e)6. The Examiner suggests that HECB 908.10.c. be examined and, if necessary, changed to include school policies for granting of credit in courses offered by such school. No other comments were received relating to this rule.

44. HECB 908.10.d. requires schools to publish and observe fee schedules and incidental charges. As the Board points out,

> "In order to make rational decisions about education, students should be able to balance the total cost of a program against the vocational and personal benefits received from completing it. HECB 908.10(d), in conjunction with HECB 908.10(a) and HECB 908.11, assures the availability of this information. Without this requirement, students may be misled by a cost figure for tuition which fails to include required fees, book costs, laboratory fees, etc. Minnesota Statutes, Chapter 141 (1974) has a very similar requirement for vocational schools in Minnesota." (Id.)

At the hearing, the term "up-to-date" was changed to "current" for purposes of linguistic accuracy.

The Examiner believes that HECB 908.10.d. is reasonable and necessary, as corrected, for the reasons stated by the Board. It is suggested as a footnote that the syntax of the rule be examined and revised, if appropriate (specifically, the last phrase of the rule).

45. HECB 908.10.e. is reasonable to apprise students of a school's refund and adjustment policies. The Board noted that this rule is also important to financial institutions which lend students money for tuition. It was also pointed out that the "tuition refund policy appears to be a key link between high dropout and high default rates." (Id.) This provision, in combination with HECB 908.10.a. is felt by the Board to provide students "with information which at a minimum should be a major consideration in the decision either to pay for or to borrow money for a program where the rate of completion is low and few refunds are allowed." (Id.)

Even if HECB 908.10.a. is not adopted, it appears to the Examiner that HECB 908.10.e. would be valuable and necessary for the stated purpose. There were no comments about this provision, but, as in the immediately preceding section, the Examiner suggests that

the syntax of the rule be examined for clarity (particularly the phrase "and the policy and procedures are observed as published.")

46. Providing information about a school's financial aid program under HECB 908.10.f. is reasonable because "many students need financial aid in order to take advantage of post-secondary educational programs, the procedures and standards used for the selection of aid recipients may be an important criteria in choosing an educational program. Without this rule, students may be misled by vague references to financial aid when they meet none or few of the standards used for recipient selection or may feel unable to meet the repayment terms." (Id.) No comments were offered regarding this rule.

47. HECB 908.11 is reasonable and necessary as a standard for legitimate and authentic schools to ensure that the advertisements for and publications of the school are not deceptive or misleading. The Board's stated support for this rule is that students -- prospective students, in particular -- are assisted by it "in making sound rational choices concerning private post-secondary education which require a major investment of time and of the students' resources. Students have been misled about schools' programs, personnel, facilities, or occupational opportunities in Minnesota and other states. With this rule, there is protection against misrepresentation and the development of false hopes through promotional materials and presentations." (Id.)

MPIRG considers this one of the important provisions of the proposed rules because "the student has little means of checking out a school's claims and its ability to place its graduates or on the precise skills which the school would help them acquire." (T. 138)

Such fact is aptly illustrated by Mr. McGuire's testimony that the catalogue for the school he attends claims there are 600 students and 50 faculty members. On arrival at the school, he found that there was actually an accurate ratio of 22 students per teacher instead of the 12 students per teacher ratio indicated by the catalogue. (T. 118)

Opposition to HECB 908.11 was expressed primarily by Mr. Price. That opposition was based first upon his correct assertion that "the Act contains no general grant of authority to HECB to regulate and control advertising," and is, therefore, beyond the Board's statutory authority. (Ex. 24, p.3) Notwithstanding the lack of specific authority regarding advertising, the Board is charged in the Act "to assure the authenticity and legitimacy of private post-secondary education institutions and programs." (Ch. 201, section 1) To that end, the Board must establish standards by which to judge schools. Truthful and non-deceptive advertising appears to the Examiner to be a most obvious and important criterion against which a school's legitimacy and authenticity may be measured.

Mr. Price's second reason for opposing the proposed rule is that Minnesota has a "little FTC act" which covers the same material as the rule. He feels this provision is duplicitous. (T. 197-198) Both the Board and the Attorney General's office agree that schools would be covered by the False Advertising Act, but HECB 908.11 goes beyond the general provisions of that act in its specificity with regard to schools. (T. 198, 217-218)

Special Assistant Attorney General Alan Held, with the Consumer Protection Division, testified that there are two major types of complaints which come to his office's attention. "The most important . . . has concerned misunderstandings or misrepresentations concerning occupational opportunities for graduates of an educational institution and the second area that we've received some complaints on has concerned fees." (T. 212) He continued,

> "The Consumer Protection Division does support these rules and believes that there is a need for more specific guidelines and rules governing educational institutions. The reason for this is that in the course of our enforcement of false advertising statutes, which is drafted in such generalized language, it becomes often difficult, even in the business area, which is our most common area of enforcement, to make specific demands or requests for changes on the part of a prospective defendant, and I see the need for guidelines which can be established through these rules which won't have the force or effect of rules but certainly will help to set some standards for advertising and promotional literature. Also, I see the need to take some of that responsibility out of the Consumer Protection Division and put it in the hands of those who have perhaps more special training in that area and are more familiar with the special needs of educational institutions. . . .

"We would hope that that provision, of course, would be enforced vigorously, one, by establishing perhaps informal guidelines, spelling out its meaning in specific instances and additionally, by revoking, where necessary, the approval granted to institutions which do use false advertising." (T. 212-214)

Considering the Board's and the public's presentations in support of this rule, the Examiner finds that it is reasonable and necessary. It should be noted, however, that informal guidelines such as Mr. Held suggests may thwart the purpose of administrative rules if such guidelines take the place of or are used as a part of formally adopted rules. Use of such supplementary guidelines must be carefully considered by state agencies and their counsel to ensure that they are not violative of the Administrative Procedures Act.

48. Identification of school recruitment agents is provided in HECB 908.12. Such provision is reasonable and necessary "because students should not be advised by compensated recruiting agents without knowing that a paid agent is the source of the advice." (Ex. 9, p. 12) The Board noted that there is no particular fashion in which the recruitment agent must identify himself. (T. 198) No critical comments were addressed to this provision at the hearing or in written comments. (See also HECB 912 and Section 53, infra.)

49. Substantial changes were suggested to HECB 908 by Mr. Stegemoeller in Ex. 13. (See Ex. 13, p. 4. Note that the changes referred to are contained in the suggested rule HECB 907.) Without specific comment on each of the suggested changes, the Examiner takes note that Mr. Stegemoeller would have the Board delete many of the same parts of HECB 908 which received a great amount of criticism. The suggested rule also changes some of the Board's proposed language, presumably for the purpose of clarification and, in some cases, to be broader in scope. These changes are worth the Board's consideration. The Examiner refrains from comenting on the specific changes, however, because no supportive testimony accompanied the suggestions, and it is unclear to the Examiner why some provisions are changed, expanded or omitted.

Mr. Boltuck did reiterate that he supports HECB 908.09 as found in the Board's proposed rules and feels such provision was

omitted from Mr. Stegemoeller's suggested rule by inadvertence. (Ex. 16, p.3)

50. HECB 909 provides a procedure by which schools which are not granted approval for degrees or names or not deemed legitimate and authentic may appeal the Board's decision. This rule is mandated and authorized by section 5 of the Act and, as such, appears to be reasonable and necessary. There was no comment at the hearing relevant to HECB 909, and the Examiner believes that comments mentioning this rule were misdirected. (See Ex. 24, pp.3-4) (In the event that such comments were not misdirected, the Examiner is unable to determine the thrust of such comments.)

51. HECB 910 is proposed to allow the Board to withdraw approval of a school's status as legitimate and authentic, its degree offerings or its use of a particular name. Appropriate procedures under the Administrative Procedures Act are afforded any school so adversely affected, and specific grounds are enumerated for such withdrawal. The Board's reasons for this rule are that "the adequate and equitable administration" of the Act requires it, significant changes in a school's administration or program to the detriment of the student body requires it, and an initial approval based upon false, misleading or incomplete information requires it. (Ex. 9, p. 13) The Board notes that "the language of the grounds for withdrawal of approval is verbatim or very similar to that of the grounds in Minnesota Statutes, section 141.29, subdivision 1(a), (b), (c), and (d) (1974)." (Id.)

Criticism of and support for HECB 910 was similar in many respects to that of HECB 908.11 (See Section 47, supra) In addition to the types of arguments noted there, however, Mr. Price raised the question about the Board's authority for policing the schools after registration or approval by the Board. (T. 260) In response, Dr. Laird cited the Board's general authority under the Act and that in order to determine which legitimate and authentic institutions merit the approval of degrees and the approval of use of names necessarily involves "the way in which a school or institution represents itself to prospective clients, and, under this law, particularly those who are residents of the State of Minnesota." (T. 260-261)

Expanding upon that statement, Dr. Laird further asserted,

> "It seems to me absurd on the face to have the Legislature confer upon the Board authority to make approval for the granting of degrees and use of names and then assume that forever after, those schools that have been granted that approval shall be free to proceed and act as they please without some attempt on the Board's part to determine whether or not the conditions which were present at the time of approval were, in fact, to continue. In fact, it would seem to me that going through that process in the absence of some continuing review, would be a greater disservice to the residents of the state than to not have an approval process at all, for it would offer an immediate sanctuary for the kind of illegitimate activity that the Act was intended to assist in ameliorating." (T. 262-263)

The Examiner agrees with that statement.

The question was raised as to whether the provisions of the HECB rules (908.11 and 910(c)) prohibit anything which is not prohibited by the False Advertising Act. (See also, Section 47, supra) Mr. Held, of the Consumer Protection Division of the Attorney General's office, noted that the proposed rules do go beyond such law in their specificity with regard to schools but "schools would be covered by the False Advertising Act." (T. 218) He pointed out that there are two remedies available for relief in the case of false advertising for educational opportunities. One is an action under the False Advertising Act. "Such action can result in injunctive relief or civil penalties up to $25,000. However, I believe that the use of this type of a procedure, revoking approval, would certainly be a better procedure to use than seeking injunctive relief and civil penalties." (T. 214)

It appears to the Examiner that HECB 910 satisfies Mr. McGuire's concern that there be some way for the Board to review whether the standards established by the rules are being met and an adequate method of enforcement or sanction if such standards are not met. (See T. 121)

It was accurately observed by Mr. Price that the Statement of Need does not address itself to 910(c). The Statement of Need does not talk about policing advertising or the basis upon which the Board asserts its authority to do so. (T. 262) That alone does not dictate that there is no basis upon which the rule may be found reasonable and necessary. As set forth in the preceding paragraphs of this Section, the Board did make a presentation at

the hearing to support the proposed rule. Such presentation, in the Examiner's opinion, was sufficient to support the finding herein of the need for and reasonableness of proposed HECB 910 and its component parts.

The specific language of HECB 910(c) was commented upon as being somewhat ambiguous. For example, the phrase "substantially inaccurate or misleading" was criticized as a "term that poses absolutely no standard and gives the Commission absolute discretion as to the standards it may wish to apply with respect to advertising or any kinds of information given to students." (T. 255) Mr. Price pointed out that all of the terms used in HECB 910(c) mean approximately the same thing; they all mean that the institution is not telling the truth. (T.255) That is not to say that there is no difference between the terms. As Mr. Hatanpa observed, "Information may not be false and yet it may be misleading." (T. 256)

To clarify the rule, the Board accepted Mr. Greenman's suggestion to substitute the phrase "inaccurate in a material respect" for "substantially inaccurate." (T. 260) This is not considered to be a substantial change.

It should be noted also that Mr. Held reiterated his "hope that guidelines would be drafted to enable schools to more easily understand the boundaries that their advertising may take." (T. 214)

52. Short term conditional approval of degrees and names of registered schools is provided in HECB 911. The Examiner agrees with the Board that "a need to adopt HECB 911 arises because it would be detrimental to enrolled students and schools to refuse to approve or take action interpreted as unfavorable to legitimate and authentic schools with minor infractions of these rules which can be remedied easily. (Ex. 9, p. 13)

Although no particular criticism was expressed either during or after the hearing, it was urged by Mr. Boltuck that where a majority of the various criteria for legitimate and authentic registration are not met, the contingent approval be made only upon affirmative statement of an intention to meet these requirements within the period of such contingent approval. This is to eliminate the possibility of continually renewing contingent approvals. (T.

144-145; Ex. 16, p. 2) Without specific findings regarding Mr. Boltuck's comment, the Examiner suggests that it merits the Board's consideration as a clarification or improvement upon the rule. No determination can now be made as to whether the rule, so altered, would be substantially changed.

53. HECB 912 is reasonable and necessary as a restatement of section 7 of the Act with the addition of standard language which may be used by the school to indicate its registration with the Board. The Board deleted from the originally proposed rule the phrase "and has been judged authentic and legitimate" because it was felt that such language would change or adjust by rule clear statutory language. (T. 265)

54. HECB 913 is proposed to clarify the Board's policy of not refunding fees collected pursuant to section 9 of the Act. The Board notes that the provision is necessary to defray the cost of reviewing applications for registration. (Ex. 9, p. 13) "This section is merely to state that at the time of registration, fees will be required for schools that come within the purview of the statute and the rules, and should the Board subsequently take action with regard to approval authorities, which is negative, none of the fees collected are subject to any refund." (T. 267)

Mr. Price indicated that he thought it might be advisable for the Board to submit, in the rules, a fee schedule for registration and a fee schedule for approval. Then the discussion could center on whether or not the Board has authority to receive fees for approval. (T. 270) Responding to that suggestion, Dr. Laird remarked that inclusion of a schedule of fees in the rules would work to the disadvantage of institutions. Rather than establish a fee schedule as a rule, the Board feels it would be more appropriate to delegate the authority to set fees to the Executive Director as permitted in the Board's judgment under section 10 of Chapter 201. Furthermore, the maximum fee which may be charged is established by that law. (T. 271)

Mr. Price's position is that under the statute, schools are required to pay a fee only for registration. HECB 913 speaks to approval as well as registration. It was pointed out, however,

that as part of a school's application for registration, it may also request approval for the granting of either a specific degree or the use of a name. In the event that such approval is denied, the rule specifies that the registration fee submitted will not be refunded. (T. 267-268) The problem is solvable by eliminating the last phrase of HECB 913 and putting a period after the word "refundable". This solution appeared to be acceptable to those who were interested in discussing the matter at the hearing. (T. 270)

The Examiner does not believe there is any reason to assume that a distinction must be made for fees submitted in connection with the various types of applications (simple registration, approval of degrees or approval of names). (But see Section 55, infra, regarding the possibility of different amounts which may be established as fees for the particular types of registration.) Notwithstanding Mr. Price's contention that the Act uses only the term "registration" in Section 9 (see T. 266-267, 209), construing the statute as a whole, the meaning appears to be registration of any sort - including registration for approval. The non-refundability provision is, therefore, found to be reasonable and necessary as applied to all fees submitted to the Board in connection with the proposed rules.

55. HECB 914 is reasonable as a statement of the authorities delegated to the Executive Director of the Board. By such statement, the public is made aware of who has responsibility for the functions and operations of the Board in implementing the Act. As noted in the Statement of Need, "without this provision, implementation of the Act would become inefficient and unnecessarily cumbersome to the Board and the schools." (Ex. 9, p. 14)

Regarding the Executive Director's authority to set fees, it was suggested that different fees might be appropriate for the different types of registration. (T. 28-30) Considering the fact that a maximum fee of $200 is set by section 9 of the Act, the Examiner finds that such delegation of authority, as limited by law, is entirely reasonable. It also appears that such discretion as is vested in the Executive Director by the rule is needed to allow that person to adjust such fees periodically as experience may dictate.

Mr. Crawford expressed concern about the provisions relating to the delegation of authority as found specifically in HECB 914 and also as found in the general tenor of the rules. According to him,

> "the provision 'that the executive director shall, at least annually, advise and report to the Board the status of this program,' suggests that the Board's role will be limited to once-a-year, and if this was the legislative intent, we feel that it would have been so stated in the law. We feel that it is inappropriate for these regulations to delegate - and perhaps beyond the scope of the statute and other legal requirements - to delegate such substantive responsibilities as the naming of advisory committees, for instance, the establishment of guidelines, the prescribing of all of these procedures and setting up of fees to a staff function." (T. 124-125)

The reason for that and other provisions was clarified when Dr. Laird pointed out that the HECB is made up entirely of lay people who come together generally once a month. They usually have a very comprehensive agenda at their meetings and have found it desirable to delegate a substantial amount of authority for operations to the Executive Director and staff. Consequently, there is a fairly wide area of authority delegated to the Executive Director. (T. 275)

The Executive Director is specifically given authority to approve the use of names pursuant to HECB 906.50 "out of sensitivity to the possibility that that particular section would need some additional explanatory guidelines or there might be some special instances in that section which would need special guidance." (T. 276; see Section 26, supra.)

Guidelines which may be set up by the Executive Director pursuant to his delegated authority would be considered by the Board as "interim rules" without really having the force or effect of rules. Such guidelines could be used during an interim period and then be evaluated for the possibility of inclusion as a formal rule. "It's [the Board's] intent to append to whatever set of rules [it is] able to adopt and promulgate an extensive set of formal or informal guidelines that eventually would carry any semblance of import of the rules themselves." (T. 276-277) Without specific findings relating to such "guidelines," the Examiner would caution the Board that only "procedures concerning only internal management

which do not directly affect the rights of or procedures available to the public need not be adopted as rules." (Minn. Stat. § 15.0412, subd. 3; see Section 5, supra.) Guidelines which go beyond such statutory limits would be beyond the authority of the Board or the Executive Director.

56. The advisory committee established by HECB 915 is intended to assure "that the Board will make decisions on the basis of recommendations of a group large enough to include the varied qualifications necessary to consider the broad range of degrees and schools required to register by the Legislature. The inclusion of the purposes of the Advisory Committee . . . assures that the committee will have a continuing role in the evaluation process and that schools subject to registration will understand the role of the committee." (Ex. 9, p. 14) As such, the rule is reasonable and necessary.

Mr. Boltuck supports the idea of having an advisory committee composed of citizens as a consumer measure. He is concerned, however, that students have input on matters which so directly concern them and suggests "that at least 10% of the membership of the advisory committee. . . shall be fulltime enrolled students in schools judged authentic and legitimate by the HECB at the time of their appointment." (T. 145; Ex. 16, p. 2)

The criteria set out in the rule would not preclude student membership on the advisory committee but also does not require student representation. The Examiner believes Mr. Boltuck's suggestion has merit and commends it for the Board's consideration. Because the implementation of such suggestion might be contested as unreasonable by schools covered by the rules or other interested persons, the Examiner believes such change would constitute a substantial change to HECB 915.

57. HECB 916 and HECB 917 are proposed to acknowledge and address other statutory provisions which affect schools which also come within the purview of Chapter 201 and the proposed rules thereunder. The two rules are considered together because most of the comments directed to one of them may be equally applicable to the other.

In general, HECB 916 recognizes that "several agencies of the state of Minnesota have been operating under their respective statutes prior to the [enactment of Chapter 201] and have established staffs and sets of procedures for implementing those statutes." (Ex. 9, p. 14) In particular, the rule acknowledges that:

> "Currently, the Minnesota Department of Education administers a strong Private Business, Trade, and Correspondence School Act, Minnesota Statutes, Chapter 141 (1974) which provides for licensing profit-making schools and institutions. While there is some overlap between the schools regulated by Chapter 141 and the Act, the proposed rules and regulations will be applied to a broader range of vocational schools, including non-profit institutions and those licensed by other state agencies, as well as to tradiditional institutions of higher education. In addition, the Act has specific concerns about the use of terms in the name of the school and about record retention which are distinct from the concerns of Chapter 141." (Id.)

Considering such "overlap", HECB 917 affirmatively sets forth the policy position of the Board that actions taken pursuant to Chapter 141 do not affect "the rights, duties and obligations of [any] school, person, or entity" subject to Chapter 201 or the proposed rules. The Board asserts that "HECB 917 is needed to preserve the respective rights and responsibilities of the Board and the Commissioner of Education." (Id.) It is noted that no comments were addressed specifically to this rule, but rather to HECB 916 with the inference that HECB 917 was included as the object of such comments.

Some changes in the language of HECB 916 were suggested by the public and accepted by the Board at the hearing. Because the first sentence of the originally proposed rule implied an authority in the Board to reject a "simple registration" and conditioned registration with the HECB upon having some appropriate license (such precondition not being authorized by the Act), the Board indicated a desire to change the phrase as it appears at the end of the first sentence of the rule from "prior to registration by the Board under the Act" to "prior to any approval by the Board under the Act." (T. 278) The remainder of the first sentence (requiring currently valid licenses where such are required by law) was not changed or challenged. This provision simply recognizes that "no school subject to licensure in Minnesota can operate without such license, consequently review by the Board would

be an unnecessary and futile waste of time in cases where licenses are denied." (Ex. 9, p. 14)

The Board also agreed to change the word "and" to "or" as such appears in the third line from the bottom of the first paragraph in the proposed rule. (T. 278-270) A minor change in capitalization is also suggested by the Examiner for uniformity and clarity in the rules, to-wit, changing the upper case "C" to a lower case "c" as it appears in the last word of HECB 916.

The main criticism presented in opposition to HECB 916 (and, in effect, against the rules as a whole) was that it is duplicitous. Indicative of such duplicity is the Statement of Need which declares, "In developing these rules . . . the staff has borrowed certain language from other statutes and rules in Minnesota . . . where the intent of such language was judged as parallel to the functions and activities contemplated by Chapter 201." (Ex. 9, p. 4) More directly, Dr. Laird noted, "We are not insensitive to the burden which may be placed upon those schools and institutions that may, at this point in time, fall under the purview of both 141 and this statute or other licensing statutes. It is our intent to affirmatively attempt to limit that burden to the extent which is possible. It is our intent to work as closely with the Department of Education personnel as is feasible, to standardize the kind of information that we may be asking from those institutions." (T. 292)

Aware of the serious concern over the problem of dual regulation, especially by the Department of Education and the Board, Dr. Laird noted that practically "if the two agencies don't work together and cooperate in this situation, then it would seem to me that the reaction is going to be overwhelmingly negative against either or both agencies, and we're going to be in a pickle, which will be impossible to operate in." (T. 163) In accordance with that remark, he further commented that HECB 916 "is written to be of assistance to those institutions or schools which, under present circumstances, would be under the purview of both statutes and it's an attempt to set forth some procedural guidelines under which we would operate so that an institution would not be whiplashed between the two agencies." (T. 278)

Notwithstanding the Board's professions of cooperation and "complementary" regulation, much comment on the proposed rule emphasized the duality in application of indentical or similar standards and the burden imposed on schools having to comply with the requirements of two agencies performing essentially the same function.

Mr. Kenneth Hatanpa, in a critique of the proposed HECB rules which he submitted to the Assistant Commissioner of Education, Robert Van Tries, on March 11th, indicated that HECB 916,

> "Provides that the Board will accept as final the determinations of the Commissioner of Education, as to whether a school subject to Chapter 141 meets the requirements of that Chapter. Further, it states that the Board will not conduct separate inquiries into the substantive basis for those determinations. Since the requirements relating to a school's financial condition are essentially the same under Chapter 141 and the proposed rules, and since the Commissioner is prohibited from issuing a license to the school unless he determines that they have a sound financial condition, and since the Board will accept the Commissioner's determinations as final, I wonder why the private vocational schools subject to Chapter 141 are required to submit financial information to HECB.
>
> "Further, since Chapter 141 and the proposed rules both require that promotional materials and advertising do not give false, fraudulent, deceptive, inaccurate or misleading impressions with respect to a school, and since Chapter 141 requires that schools subject to the chapter submit copies of all promotional materials and advertising, and since these are reviewed by the department in order to make such determinations, I wonder why the schools subject to Chapter 141 are required to submit promotional and advertising materials to HECB.
>
> "There are some other similar requirements pursuant to Chapter 141 which are also required of schools under the proposed rules as the language is not identical. These would include the requirements of HECB 908.06, 908.07, 908.08 and 908.10(b), (c), (d) and (e). The financial requirements previously mentioned fall under HECB 908.04, and the advertising requirements discussed earlier fall under HECB 908.11." (T. 284-285)

In light of the foregoing, Mr. Hatanpa questioned the meaning of the rule's provision that the Board "will accept as final the Commissioner's determinations," and also questioned what will happen to the material that would be filed with the HECB after such material had already been approved by the Commissioner of Education. (T. 286)

It is obvious from a review of the record that the Board's acceptance of the Commissioner of Education's determinations is limited to licenses issued by the Commissioner. With regard to areas covered by both Chapter 201 and 141, "if, in its process to

determine whether or not to grant approval for the offering of specific degrees or the use of certain names or approve a plan for the keeping of records, the Board decides that it's going to make a different judgment in some of those areas, that the Board, at this point, is not going to waive that opportunity nor, do I think it can." (T. 295) In response to a question regarding procedures between the HECB and the Department of Education (which administers Chapter 141 and rules thereunder), Dr. Laird noted that "an institution or school which was approved by 141 could continue to operate in the state, in the absence of any action on the part of the Board. With regard to the limited aspect under which we would be taking action, I assume that failure on our part to approve a degree or use of name, would not necessarily require the Department of Education to reconsider their decision on licensure." (T. 162)

The Board's position was capsulized as "an assertion that the standards in the same areas may be different for being licensed to do business and being approved to offer certain degrees or to use certain names." (T. 296) It is with this position that Messrs. Price and Greenman took strong exception. Noting the similarity of many requirements under Chapters 201 and 141, both gentlemen questioned "the Board's authority to impose higher or different standards in those areas as to those criteria which were already set forth in other licensing statutes and which the appropriate licensing agency has found the school meets." (T. 281-282, 289-290)

In analyzing these rules in a manner similar to that done by Mr. Hatanpa, Mr. Greenman asserts:

> "It can scarcely be argued that a school licensed under the provisions of Chapter 141 is not authentic and legitimate. The Department of Education, in approving a school under Chapter 141, is required to pass upon many of the same aspects of the school as the Board proposes to subject to its 'criteria', such as financial condition, faculty qualifications, and honest advertising. Compare Minnesota Statutes § 141.25(7)(a) and (c) and § 141.28(3) with proposed HECB 908.04, .08 and .11. Nevertheless, the Board stated at the public hearings that under HECB 916 and 917, it considers itself free to make determinations contrary to those of the Department of Education under Chapter 141 with respect to exactly the same aspects of a school. This is precisely the sort of 'harassment' and 'double jeopardy' that was specifically disclaimed by the proponents of the

Act before the Legislature, and which the Legislature has repeatedly held to be unnecessary. It is unauthorized by the Act and should not be permitted." (Ex. 23, pp. 12-13)

Mr. Price would concur in such statement and would add that the dual standards would be unreasonable. (T. 229) He offered the observation "that we're left with a rather incongruous result that the Board is willing to give full faith and credit to decisions made by agencies outside of the state of Minnesota [referring to the Board's acceptance of a degree offered in another state as qualification for a school to use the term "university". (See Section 26, supra)] , and yet, apparently, it is unwilling to give full faith and credit to decisions made by sister agencies within the state." (T. 292-293)

As a result of the duplicity in regulation, the proposed rules were also criticized as being unreasonably and unnecessarily burdensome to schools having to comply with the requirements of both Chapters 201 and 141. Mr. Price directed his comments on behalf of Control Data Institute to the last sentence of HECB 916. That sentence prescribes that materials be filed with the Board "in addition to, and not as a substitute for" the same material submitted under Chapter 141 or other laws. It would be a burden, according to Mr. Price, in that the applicant or submitter would have to go through the same procedure twice or at least duplicate the documents being submitted, thereby expending extra costs and time. This cost is passed back to the consumer. He questioned whether that is reasonable, but agreed that some arrangement under which information submitted to further requirements of either one of the chapters would serve as the information required under the other would relieve the problem of duplicity. (T. 151 - 153)

Mr. Gessner, in comments about the intent of the Act, pointed out that in the legislative hearing dealing with Chapter 201, "members of that committee expressed concern over the potential multiple impositions that the provisions would have on those schools already licensed by the State of Minnesota or known to the State of Minnesota which are located in Minnesota." (T. 202-203) Such "multiple impositions" are exemplified by HECB 905 and HECB 906. (See T. 148, 240; see also, Sections 25 and 26, supra.) At

variance with Mr. Gessner's implied limitations of the Board is the Board's own interpretation "that it was the intent of the Legislature in adopting Chapter 201 to centralize in one agency, responsibility for approval with regard to the use of names, the granting of degrees in post-secondary education and the maintenance of student records." (T. 244)

Mr. Greenman suggested that a possible solution to the problem raised by two agencies having to pass judgment on the same school in its application under Chapters 201 and/or 141 may be adoption of a policy in the nature of "collateral estoppel" as used in the courts. Under that doctrine, where an issue is resolved in one court, and arises in another suit, either in the same state or in another state, the resolution by the first court may be pointed to in the second court and such decision would be determinative. (T. 299)

Notwithstanding such plausible suggestion, and notwithstanding the preliminary discussions and intent of the Legislature, Chapter 201 does give the Board authority which duplicates, in part, the authority granted the Department of Education under Chapter 141. Because of that fact, and setting aside the Examiner's sympathetic appreciation for the problems faced by schools facing dual regulation, the Examiner concurs with the thrust of Dr. Laird's statement that

> "It is the purpose of these rules, and supplemented by [HECB] 916 and 917, to signify that our Board will proceed on the authority granted to it under Chapter 201 to make necessary judgments prior to determining whether to grant approval for the granting of degrees and the use of certain names and to approve the plans for keeping of records for those institutions that are under the purview of this Act. Those authorities and those actions are not the same as occur in licensing statutes. They are in addition to and that's the purpose of insuring that the Board, in this case, would have whatever information it deems necessary in order to make the judgments that it's authorized to make. . . . I don't see any way in which the Board could, in advance, guarantee that it would accept the judgments of individuals or agencies over which it had no influence or control, to provide the basis for the judgments that this Board has to make by itself." (T. 287-288)

Considering the stated purpose of the Act and the Act as a whole, and considering all the testimony offered by the Board and interested persons, the Examiner finds that HECB 916 and HECB 917

are reasonable and necessary for the Board to carry out its functions under Chapter 201.

58. HECB 990 is needed and is reasonable as a standard provision to ensure that if one of the rules in the chapter is deemed to be ineffective or inoperative for whatever reason, the remainder of the rules would continue in effect. (See Ex. 9, p. 14) No comments or criticism were offered regarding this rule.

59. The Examiner received suggestions for rules which are supplemental to those proposed by the Board and discussed at the public hearing. These suggested additions do not necessarily fall within the outline of the proposed rules headings although they may be associated in subject matter with one or more of those proposed rules. All of the suggestions for additional rules merit the Board's careful consideration. (See Ex. 16, p. 2; Ex. 19; and Ex. 20, p. 2.)

No findings are made regarding any of the suggested rules because they have not been properly publicized or discussed. Should the Board wish to adopt any of the suggestions, it would be necessary to follow the proper procedures under the Administrative Procedures Act.

60. Without receiving any specific comments on the record, the Examiner finds that there is inconsistency in the numbering within the rules. For instance, the subsections in HECB 906 are .10, .20, .30, etc. In HECB 908, the subsections are .01, .02, .03. This should be uniform. Similarly, in HECB 907, the subsections are letters instead of numbers. The subsections under HECB 904 do not fit within any of those abovementioned systems, and the numbering used in the Statement of Need differs from that used in the rules. The Examiner suggests that this be remedied by reference to the rules of the Office of the State Register and the uniform numbering/lettering system described therein.

Based on the foregoing Findings of Fact, the Hearing Examiner makes the following as his

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Board. All of the substantive and procedural requirements of statute or rule have been complied with.

2. The Board documented its statutory authority to promulgate the proposed rules, except as specifically indicated in the Findings of Fact.

3. The Board demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts, except as specifically indicated in the Findings of Fact.

4. The promulgation, approval and adoption of the proposed rules is not precluded by the enactment of the law suspending enforcement of such rules.

Based on the foregoing Conclusions, the Hearing Examiner makes the following as his

RECOMMENDATIONS

1. That the proposed rules be promulgated, approved and adopted, as modified where appropriate, pursuant to the suggestions contained herein.

2. That those proposed rules which were found to be unreasonable, unnecessary, beyond statutory authority or not supported by an affirmative presentation of facts not be promulgated, approved or adopted.

3. That the Board consider submission to the Legislature of corrective Legislation to clarify the provisions of Minn. Stat. §§ 136A.61 to 136A.71.

Dated this 15th day of November, 1976.

Myron S. Greenberg

MYRON S. GREENBERG
Hearing Examiner

March 10, 1977

Mr. John F. Markert
Executive Director
Minnesota Catholic Conference
145 University Avenue
Saint Paul, Minnesota

Dear Mr. Markert:

In your recent letter to Attorney General Warren Spannaus, you request our opinion concerning the constitutional validity of Minn. Laws 1975, ch. 201 and certain rules proposed to be adopted thereunder.

For the following reasons, we must decline to render a formal opinion in response to your request. First, the attorney general is authorized by statute to render legal advice and opinions only to bodies of the legislature, certain state officials and attorneys for political subdivisions. See Minn. Stat. §§ 8.05-8.07 (1976). Furthermore, we do not ordinarily undertake to render opinions upon the constitutionality of state statutes. See Ops. Atty. Gen. 629-a May 9, 1975; and 733G, July 23, 1945.

Our office does, however, review proposed regulations for form and legality prior to their filing. I have, therefore, referred your material to Mr. Michael Miller of our office for consideration in connection with his review of the regulations in question.

Very truly yours,

KENNETH E. RASCHKE, JR.
Assistant Attorney General

KER:bw
enc.

MINNESOTA CATHOLIC CONFERENCE

EXECUTIVE DIRECTOR
John F. Markert

145 UNIVERSITY AVENUE (at Rice)
SAINT PAUL, MINNESOTA 55103
Phone: 612/227-8777

February 28, 1977

Mr. Warren Spannus, Esq.
Attorney General
State of Minnesota
State Capitol Building
St. Paul, Minnesota 55155

RECEIVED
MAR 7 - 1977
ATTORNEY GENERAL
102 STATE CAPITOL
ST. PAUL, MINN. 55101

In Re: Chapter 201, Laws of 1975
HECB Rules No. 901 thru 1000

Dear Mr. Spannus:

I am writing you on behalf of the six major theological seminaries situated within the State of Minnesota. Specifically I speak for the Presidents of those seminaries. Their institutions and their specific identities are amply set forth in the letterhead on two or three of the enclosures which you will find noted in the body of this correspondence.

Subsequent to the passage of Chapter 201, Laws of 1975, by the State Legislature the matter was then referred to the Higher Education Coordinating Committee for the promulgation of rules and regulations under the authority and mandate of the statute. As you know, the HECC was then changed by law to become the Higher Education Board (HECB). The proceedings continued on before the HECB and the matter of hearings on the proposed rules and regulations pursuant to Chapter 15 of Minnesota Statutes was referred to a Hearing Examiner. The Examiner took extensive testimony concerning the law and the proposed rules and regulations. Part of the testimony was offered by myself on behalf of the Presidents of the Consortium of Minnesota Seminaries. There was also testimony by three of the Presidents themselves.

For your information therefore I am enclosing a copy of the testimony that we submitted to Mr. Greenberg, the Hearing Examiner. There were three separate occasions of testimony. The first was a letter addressed to Mr. Greenberg, dated February 10, 1976, copy of which is enclosed for your information. The second is a letter of April 6, 1976, addressed to Mr. Greenberg. This constitutes a written copy of the oral testimony presented to Mr. Greenberg at one of the actual hearings that he conducted. The third is a copy of a letter written to Mr. Greenberg on May 10, 1976, as the Hearing Examiner. It constitutes written testimony to the record before it was closed pursuant to Chapter 15.

I am also enclosing for your information copy of a letter that had been addressed to the HECB on the occasion of their consideration of the recommendations of staff and the Hearing Examiner relative to the final adoption and promulgation of the proposed rules and regulations. This letter bears date of January 25, 1977 and has enclosures of proposed changes to the rules and regulations as well as a proposed Act which would grant exemption from this bill to theological seminaries in the State of Minnesota.

As a matter of fact, in reference to the last item above (i.e. the proposed bill to grant exemption) you will note that the exemption which would be granted by this proposed bill would be much broader than would be necessary to exempt seminaries. In other words, the exemption runs to institutions of higher education which do not qualify as seminaries. By way of a parenthetical remark, I would add that the reason for this is that in my role as the Executive Director of the Minnesota Catholic Conference I am not totally disinterested in the fate of the Catholic colleges throughout the state at the hands of this bill. However, it is to be noted that Dr. Harvey Stegemoeller, the Executive Director of the Minnesota Council of Private Colleges, is officially speaking for those colleges as members of the association which he directs.

I understand that the final promulgation of the rules and regulations was considered by the HECB at its meeting of Thursday, February 24th. They adopted the rules and regulations as promulgated and recommended by the hearing officer as well as staff. They specifically did not adopt proposed rule 918 which was an attempt by HECB staff to exempt seminaries from the purview of the act. The reason is that the hearing officer felt that the addition of 918 to the proposed rules and regulations constitutes a material change to the rules which would require a resubmission of them to the testimony requirements of Chapter 15. (Again parenthetically, we do not agree that the purported 918 amendment would operate to grant the exemption allegedly intended.)

My purpose in directing this letter to you is to very specifically call to your attention our arguments to the effect that if this law is interpreted as including or applying to the six theological seminaries of the State of Minnesota it is unconstitutional for violation of separation of church and state under both the state and federal constitutions. We are most avid and sincere about this contention. In this respect I call your attention to the testimony previously alluded to as well as the findings of the hearing officer contained in paragraph 7, page 4, of the "Report of Hearing Examiner". The Examiner did not resolve the issue of constitutionality that we very specifically presented to him through written and oral testimony at the hearings.

I also call your attention to paragraph 30, page 23, and paragraph 38, page 28, of the Report of Hearing Examiner. This makes reference to our criticism and attack of the statute as being unconstitutional for reason of ambiguity and vagueness. The standards

of the act are described in relative terms which have no precise meaning. When a legitimate and authentic definition of those terms is required it is in the full discretion of the board to determine the meaning and application of this act. This discretion would seem to border on an unconstitutional and illegal delegation of legislative authority to say nothing for failing for want of specific preciseness as required by law. While rejecting our claim of ambiguity the Hearing Examiner makes such findings such as "The board must be allowed discretion in this area to determine whether schools facilities are adequate to meet its educational goals and obligations." and "The board would then determine in a general way whether there is assurance that the school has sufficient faculty resources to support the kind of program which they offer. The board does not contemplate making individual judgments about specific faculty members within an institution.*** The board attempts to evaluate the faculty,"as a collective resource that the institution asserts is there to support the curriculum", as opposed to an evaluation of the individual faculty members." This last quote is a reference by the Hearing Examiner to a reply of Mr. Laird concerning the question of ambiguity and the judgment of the schools faculty members. Apparently the Hearing Examiner adopts Mr. Laird's response as part of his findings in the case.

In terms of specific example of the delegation of authority and ambiguity in the law I refer to section 136A.64, Minnesota Statutes, which reads as follows:

> "As a basis for registration, schools shall provide the commission with such information as the commission needs to determine the nature and activities of the school, including but not limited to, requirements for admission, enrollments, tuition charge, refund policies, curriculum, degrees granted, and faculty employed. The commission shall have the authority to verify the accuracy of the information submitted to it by inspection or any other means it deems necessary."

After reading this section of the statute it becomes very obvious that the commission, now the board, is given legislative authority to regulate every phase and detail of any "school" covered by the act. The sanction for failure to meet the rules and regulations and control imposed by the board would be the ultimate sanction by your good offices to impose conformity or be put out of business.

One more example of ambiguity and complete granting of total discretion to the board and the staff of HECB is contained in the new rule HECB 907 Policies and Standards. This rules sets up policies and standards which are again extremely detailed and ambiguous in the sense that they are subject to discretionary interpretation and meaning. Then the final paragraph of HECB 907 reads as follows:

"Failure to meet any of these criteria will not necessarily prevent a school from being given approval. Rather a judgment will be made on the basis of a pattern which in the whole supports a legitimate educational program, sufficient finances and sound institutional policies and practices." (emphasis supplied)

What this says is even the criteria of the HECB 907 do not apply and may be applied either negatively or positively based upon a judgment which will be made on the basis of a pattern which in the whole supports a legitimate educational program, etc.. While the present motives and intent of the current staff and membership of the HECB would seem to be honorable and acceptable it appears from the language of this act and its regulations that the state has granted the HECB and its staff complete regulatory and administrative control over the internal affairs of the "schools" covered by the act. I would suggest that this becomes proprietary in nature and could effectively be argued as a "taking without due process" relative to almost any school to which the act applies. Specifically we would further argue that this constitutes a violation of the internal affairs of churches by regulating and controlling their seminaries which are intregal parts of their respective church denominations.

In closing I specifically request a response to this letter expressing your opinion as the Attorney General on the issue of constitutionality of this statute and its rules and regulations. These questions were properly raised through the hearing process required by law under Chapter 15 and we believe that the Hearing Examiner had proper authority and perhaps obligation to submit this question to you when the matter is so obvious on its face.

I should be most happy to discuss this matter with you or members of your staff at your request and convenience.

Very truly yours,

John F. Markert

John F. Markert
Executive Director
Minnesota Catholic Conference
and
Attorney at Law

JFM/mw
Encl:

THE CONSORTIUM OF MINNESOTA SEMINARY FACULTIES

February 10, 1976

Bethel Theological Seminary
3949 Bethel Drive
St. Paul, Minnesota 55112
Tel. 612-633-6880

Luther Theological Seminary
2375 Como Avenue West
St. Paul, Minnesota 55108
Tel. 612-646-2712

Northwestern Lutheran
Theological Seminary
1501 Fulham St.
St. Paul, Minnesota 55108
Tel. 612-645-6434

School of Divinity
St. John's University
Collegeville, Minnesota 56321
Tel. 612-363-7761

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2260 Summit Avenue
St. Paul, Minnesota 55101
Tel. 612-698-0323

United Theological Seminary
of the Twin Cities
3000 Fifth St. N.W.
New Brighton, Minnesota 55112
Tel. 612-633-4311

Mr. Myron Greenberg
Office of Hearing Examiner
1745 University Avenue, West
Room 300
St. Paul, Minnesota 55104

In Re: Minnesota Statutes 136A.61 - 136A.71
Proposed Rules, Chapter Nine:
HECC 901 - 1000
Private Institution Registration

Dear Mr. Greenberg:

I am writing on behalf of the Presidents of the six Theological Seminaries of the State of Minnesota which are members of the Consortium of Minnesota Seminary Faculties and whose names appear at the end. My purpose in writing is two fold.

First, we officially request that the hearings on the above cited proposed regulations be continued to enable the Seminaries to appear and testify on the proposed regulations and the authorizing statute (Chapter 201, Laws of 1975).

The second purpose is to go on record as being opposed to the proposed regulations in many aspects which arise from a profound and basic opposition to the statute mentioned.

We are in agreement with the policy of the law to provide quality post secondary educational private institutions for Minnesotans. Historically, however, legislative bodies have not always been successful in enacting quality education, especially at the higher education level; for the most part such attempts have resulted in a diminution of good education at the hands of a responsible educational community. In keeping with long established education traditions the theological seminaries of Minnesota (and our private colleges) have engaged in and utilized the regional and professional accrediting institutions and means which were created to assure good education. While there may be in-

President - Louis H. Gunnemann
United Theological Seminary
of the Twin Cities
3000 Fifth St. N.W.
New Brighton, Minnesota 55112

Vice President - Rev. William Baumgaertner
St. Paul Seminary
2260 Summit Avenue
St. Paul, Minnesota 55101

Secretary-Treasurer - Wendell W. Frerichs
Luther Theological Seminary
2375 Como Avenue
St. Paul, Minnesota 55108

stances from time to time when this safeguard fails to be as effective as it usually is, such exceptional events do not justify a complete rejection of the professional self-disciplining to be replaced by a law and system that has no better chance of success; indeed, it is our considered opinion that it has much less chance of success to say nothing of the practical concerns raised by the practice and history of injecting state control into what must be considered a just, thriving and successful segment of the education community.

It is the belief of the Seminary Presidents that this law calling for these regulations is in all likelihood illegal and unconstitutional. It would follow that the regulations would also be illegal and unconstitutional through no fault of the rule making authorities.

Both the United States Constitution and the Minnesota Constitution provide for the freedom of the exercise of religion.[1.] This law and its extended application constitute an interference with the internal management and policies of the Seminaries. There is no question that the operation and management of these institutions is a very real part of the practice of religion to the members of the religious denominations who sponsor and utilize them. In short they are religious communities.

It must also be stated that there is no demonstrable need for this piece of legislation in terms of protection for students attending the seminaries we represent. As a matter of fact, it appears that the statute will be counterproductive in that respect. The increased administrative costs that would be incurred in the event the Seminaries were to follow this law would result in a passed on increase in tuition rates and expense to the attending students. Indeed, the same observation seems to apply equally to all of the established post secondary educational institutions in Minnesota. The general rule in Minnesota is that post secondary students are not in need of protection from abuses at the hands of the institutions that they attend; what injustices there are, (and we don't believe there are any in our Seminaries) affect a very small percentage of students who in this day and age are certainly not without recourse or redress in the law without this legislation. The effect of this law is to impose extensive far-reaching interference with the internal policies and workings of all post secondary educational institutions ostensibly on the justification of affording protection for the small exception and not the general rule.

Part of our concern over the constitutionality of this law stems from the "establishment clause" of the constitutions upon which is based the Doctrine of 'separation of church and state'. An extension of that Doctrine is the United States Supreme Court prohibition against excessive entanglement between church and state. On June 25, 1973, the United States Supreme Court in the

Case of Committee for Public Education v. Nyquist in reaffirming the excessive entanglement doctrine said: "What our cases require is careful examination of any law challenged on establishment grounds with a view to ascertaining whether it furthers any of the evils against which that Clause protects. Primary among those evils have been "sponsorship, financial support, and ACTIVE INVOLVMENT OF THE SOVEREIGN IN RELIGIOUS ACTIVITY." (emphasis supplied) It seems obvious on the face of this law, not to mention its extension via the proposed regulations, that this is a forbidden 'active involvement of the sovereign in religious activity.'

By way of extending the constitutional observations on this law we note that the very real right of academic freedom stems from the constitutional provisions of freedom of speech.[3.] We are aware that such freedoms have as their corollary a real responsibility against abuse; but in all honesty we sincerely believe that the private education community in Minnesota is meeting all of its responsibilities commensurate to the privileges.

Frankly, we are concerned over the meaning and interpretation of the law as well as the proposed regulations. This concern is manifested by language that is both subject to arbitrary or capricious interpretation as well as incapable of precise definition or meaning. An example of the first is found in Sec. four of Chapter 201 (1975).[4.] Who is to determine what the Commissioner 'needs' for his determinations covering any and all phases of the school's activities? This section grants unlimited discretion and enforcement authority with which to dictate to schools subject to the law or to refuse approval and thereby by implication to put them out of existence.

An example of vague or indefinite language can be found in the proposed regulations in HECC 904.21: "The school shall have a sound financial condition with sufficient resources available, etc." What does this mean? What is "sound"? What is "sufficient"? What are "resources", or what are not "resources"? The definition of these terms is critical and is obviously subject to a wide range of meaning and application. The clear implication is that by being empowered to define and apply such unclear terms throughout the law and proposed regulations the commissioner has critical control over the institutions subject to this law.

We wish to go on record as informing you that it is our intention to seek legislation that would accomplish one or more of the following things:

A. The repeal of Chapter 201, Laws of 1975 (Minnesota Statutes 136A.61 thru 136A.71).

B. Corrective legislation granting outright exemption from this law for theological seminaries.

C. Corrective legislation granting exemption from this law for any post secondary education institution meeting one of the following criteria:

1. full accredition by an established and recognized accrediting institution;

2. existence for 10 years or more.

In closing we wish to thank you for your consideration of our concerns. While we are fully aware of the fact that the new law requires promulgation of the proposed rules and regulations, we nevertheless feel constrained to offer some of our reaction and concerns to both the law and the proposed regulations. Admittedly our expressions are critical; we trust, however, you will accept them as sincere and candid and without any personal animosity. In that spirit we offer our assistance and availability to both administrators and the legislators concerning these matters.

Sincerely,

John F. Markert

John F. Markert
Executive Director
Minnesota Catholic Conference

JFM/mw

cc: Dr. Carl Lundquist, President
Bethel Seminary

Dr. Lloyd A. Svendsbye, President
Luther Theological Seminary

Dr. Clemens H. Zeidler, President
Northwestern Lutheran Theological Seminary

Rev. Michael Blecker, OSB, President
St. John's University

Dr. Dayton D. Hultgren, President
United Theological Seminary

Msgr. William Baumgaertner, Rector-President
St. Paul Seminary

Honorable Jerome M. Hughes

Honorable Myrton O. Wegener

Honorable J. Robert Stassen

Honorable Peter X. Fugina

Jerry Enright

Mr. Myron Greenberg February 10, 1976

cc: Honorable David Beauchamp

Mr. Richard Hawk, Executive Director
Minnesota Higher Education Coordinating Board

Mr. David B. Laird, Jr., Asst. Executive Director
Inter-Institutional Program Planning
Minnesota Higher Education Coordinating Board

Dr. Harvey Stegemoeller, Executive Director
Minnesota Private College Council

Footnotes:

1. North Central Association of Colleges and Secondary Schools 5454 South Shore Drive, Chicago, Illinois 60615 +

   Association of Theological Schools of the United States and Canada, 42 East National Road, P.O. Box 396, Vandalia, Ohio 45377

2. Article I, Sec. 16., Minnesota Constitution: ". . . The right of every man to worship God according to the dictates of his own conscience shall never be infringed, . . .; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship: . . ."

   Article I, Bill of Rights, United States Constitution (known as the First Amendment): "Congress shall make no law respecting an establishment of religion, OR PROHIBITING THE FREE EXERCISE THEREOF; . . ." (emphasis added)

3. Article I, Sec. 3. Minnesota Constitution: "The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right."

   Article I, Bill of Rights of United States Constitution (known as the First Amendment): "Congress shall make no law . . . abridging the freedom of speech or of the press; . . . ."

4. Sec. 4
   136A.64 Information
   As a basis for registration, schools shall provide the commission with such information as the commission needs to determine the nature and activities of the school, including but not limited to, requirements for admission, enrollments, tuition charge, refund policies, curriculum, degrees granted, and faculty employed. The commission shall have the authority to verify the accuracy of the information submitted to it by inspection or any other means it deems necessary.

HIGHER EDUCATION—PRIVATE POST-SECONDARY INSTITUTIONS

SF 1432 - Hughes

CHAPTER 201

H.F.No.1506 — Jensen

[Coded]

An Act relating to education; higher education coordinating commission; providing procedure for registration and approval of private post-secondary institutions.

Be it enacted by the Legislature of the State of Minnesota:

Section 1.

136A.61 Policy

The legislature has found and hereby declares that the availability of legitimate courses and programs leading to academic degrees offered by responsible private institutions of post-secondary education and the existence of legitimate private colleges and universities are in the best interests of the people of this state. The legislature has found and declares that the state can provide assistance and protection for persons choosing private institutions and programs, by establishing policies and procedures to assure the authenticity and legitimacy of private post-secondary education institutions and programs.

Sec. 2.

136A.62 Definitions

Subdivision 1. Words, terms, and phrases. The following words, terms, and phrases shall have the meanings ascribed to them in this section for the purposes of sections 136A.61 to 136A.71.

Subd. 2. Commission. "Commission" means the Minnesota higher education coordinating commission.

Subd. 3. School. "School" means any individual, partnership, company, firm, society, trust, association, corporation, or any combination thereof, which (a) is, owns, or operates a private, nonprofit post-secondary education institution, (b) provides a post-secondary instructional program or course leading to a degree whether or not for profit, or (c) uses the term "college", "academy", "institute" or "university" in its name.

Subd. 4. Degree. "Degree" means any award given by a school for completion of a program or course which is designated by the term degree, associate, bachelor, baccalaureate, masters, or doctorate, or any other award which the commission shall include by regulation.

Subd. 5. Records. "Records" means those school documents and files containing student data relating to academic credits, grades, degrees awarded, periods of attendance, and such other matters as the commission shall determine by regulation.

Sec. 3.

136A.63 Registration

All schools located within Minnesota shall register annually with the commission. The commission shall have the authority to require those schools located outside Minnesota which offer programs or courses within Minnesota to register annually.

Sec. 4.

136A.64 Information

As a basis for registration, schools shall provide the commission with such information as the commission needs to determine the nature and activities of the school, including but not limited to, requirements for admission, enrollments, tuition charge, refund policies, curriculum, degrees granted, and faculty employed. The commission shall have the authority to verify the accuracy of the information submitted to it by inspection or any other means it deems necessary.

Sec. 5.

136A.65 Approval of degrees and name

No school subject to registration shall grant a degree unless such degree is approved by the commission, nor shall any school subject to registration use the name "college", "academy", "institute" or "university" in its name without approval by the commission. The commission shall establish procedures for approval, including notice and an opportunity for a hearing pursuant to Minnesota Statutes, Chapter 15 if such approval is not granted. If a hearing is requested, no disapproval shall take effect until after such hearing.

Sec. 6.

136A.66 List

The commission shall maintain a list of schools authorized to grant degrees and schools authorized to use the name "college", "academy", "institute" or "university", and shall make such list available to the public.

Sec. 7.

136A.67 Unauthorized representations

No school and none of its officials or employees shall advertise or represent in any manner that such school is approved or accredited by the commission or state of Minnesota except that any school which is duly registered with the commission, or any of its officials or employees, may represent that the school is registered with the commission.

Sec. 8.

136A.68 Records

After August 1, 1975, all schools located in this state must maintain permanent records of all students enrolled therein at any time. The commission may require schools to provide a plan acceptable to the commission for preserving all such records for at least ten years. The commission may require that such plan include the filing of a continuous surety bond or a deposit of funds in trust in an amount not to exceed $20,000 for the purpose of preserving records after such school ceases to exist.

Sec. 9.

136A.69 Fees

The commission may collect reasonable registration fees not to exceed $200 for an initial registration of each school and $150 for each annual renewal of such existing registration.

Sec. 10.

136A.70 Rules and regulations

The commission shall adopt policies and prescribe appropriate rules and regulations to carry out the purposes of sections 136A.61 to 136A.71. Such rules and regulations may include delegation of authority for implementation of sections 136A.61 to 136A.71 to the commission's executive director.

Sec. 11.

136A.71 Injunction

Upon application of the attorney general the district courts shall have jurisdiction to enjoin any violations of sections 136A.61 to 136A.71.

Approved May 17, 1975.

April 6, 1976

STATEMENT OF - Monsignor William Baumgaertner, Rector-President
Saint Paul Seminary

The Saint Paul Seminary was incorporated on September 2, 1895, to establish, maintain and conduct, in the City of St. Paul, a theological seminary for the education of candidates for the priesthood in the Catholic Church. It has its own Board of Trustees composed of clergy and laymen who are responsible for its operation. The Archbishop of St. Paul and Minneapolis is its ex officio chairman.

It exists, according to its by-laws, as an instrumentality of the Roman Catholic Church under the direction and control of the Archbishop of St. Paul and Minneapolis.

It enrolls about 135 students at the graduate level and serves the upper midwest. Its degrees are accredited both by the North Central Association of Colleges and Secondary Schools and by the Association of Theological Schools. All of its degree programs are at the graduate level and are offered in the context of preparation for priestly ministry, though some will take the degree without requesting ordination.

As rector-president of this school I have serious misgivings about the right and the function of the State of Minnesota in registering and authenticating the programs of a school constituted to provide for priestly ministry of the Church. I consider this an encroachment on the freedom of the school to exercise its function in service of religion both by reason of the "involvement of the sovereign" and the financial burden to the school and its students. I wish to encourage the hearing examiner to seek a clarification of the constitutionality of the law from the Attorney General or to request a suspension of the rules from the joint committee to review administrative rules.

THE CONSORTIUM OF MINNESOTA SEMINARY FACULTIES

April 6, 1976

Bethel Theological Seminary
3949 Bethel Drive
St. Paul, Minnesota 55112
Tel. 612-633-6880

Luther Theological Seminary
2375 Como Avenue West
St. Paul, Minnesota 55108
Tel. 612-646-2712

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of the Twin Cities
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New Brighton, Minnesota 55112
Tel. 612-633-4311

Testimony to Hearing Examiner, Myron Greenberg

In Re: Proposed Rules & Regulations
Minnesota Higher Education Coordinating Commission
Chapter Nine: HECB 901-1000
Private Institutions Registration

My name is John F. Markert. I am the Executive Director of the Minnesota Catholic Conference. I am appearing here today on behalf of the Presidents of the six theological seminaries of the State of Minnesota. These Presidents represent and stand for a consortium of Minnesota seminary faculties for the institutions as shown on the letterhead.

There are representatives present here today from each of these institutions. They are each prepared to make a short presentation to you as the Hearing Examiner relative to Chapter 201, Laws of 1975, and HECB 901-1000.

Our basic position relative to this hearing is that it is defective and illegal primarily because it is founded and based upon a statute which is unconstitutional. Accordingly my remarks pertaining to our reasons for this conclusion will relate primarily to Chapter 201, Laws of 1975. At the same time, however, they will relate by consequence to the proposed rules and regulations in that the latter are subject to the same observations and criticisms.

To begin with we wish to impress upon you that the major theological seminaries in Minnesota constitute a very real part of the practice of religion to the members of the religious denominations who sponsor and utilize them. As we have stated before, these seminaries are indeed religious communities which are part and parcel of their respective church. By way of reiteration of our testimony of February 10, 1976 submitted to you on the previous hearings of the first set of proposed rules and regulations, let me repeat the following testimony:

> "Part of our concern over the constitutionality of this law stems from the "establishment clause" of the constitutions upon which is based the doctrine of separation of church and state. An extension of that doctrine is the United States Supreme Court prohibition against excessive entanglement between church and state. On June 25, 1973 the United

States Supreme Court, in the case of Committee for Public Education v. Nyquist, in reaffirming the entanglement doctrine said: "What our cases require is careful examination of any law challenged on establishment grounds with a view to ascertaining whether it furthers any of the evils against which that clause protects. Primary among those evils have been "sponsorship, financial support, and ACTIVE INVOLVEMENT OF THE SOVEREIGN IN RELIGIOUS ACTIVITY" (emphasis supplied)." It seems obvious on the face of this law, not to mention its extension via the proposed regulations, that this is a forbidden 'active involvement of the sovereign in religious activity'.

By way of extending the constitutional observations of this law we note that the very real right of academic freedom stems from the constitutional provisions of freedom of speech. We are aware that such freedoms have as their corollary a real responsibility against abuse; but in all honesty we sincerely believe that the private education community in Minnesota is meeting all of its responsibilities commensurate to the privileges.

Frankly, we are concerned over the meaning and interpretation of the law as well as the proposed regulations. This concern is manifested by language that is both subject to arbitrary or capricious interpretation as well as incapable of precise definition or meaning. An example of the first is found in Sec. four of Chapter 201 (1975). Who is to determine what the Commissioner 'needs' for his determinations covering any and all phases of the school's activities; this section grants unlimited discretion and enforcement authority with which to dictate to schools subject to the law or to refuse approval and thereby by implication to put them out of existence."

In our previous testimony of February 10, 1976, we cited a few examples of vague or indefinite language in the then proposed rules and regulations. The new rules and regulations really are not much better in eliminating vagueness and the opportunity for arbitrary capricious implementation and enforcement of the rules. The following are a few examples:

1. The second paragraph of HECB 908 states as follows:

   "A school should be deemed authentic and legitimate if in the JUDGMENT OF THE BOARD IT HAS A GENUINE EDUCATIONAL PROGRAM, SUFFICIENT FINANCES, AND SOUND INSTITUTIONAL POLICIES AND PRACTICES."

What is a "genuine educational program"? What is "sufficient finances"? What is "sound institutional policies and practices"?

2. HECB 908.06 reads: "*** an educational program and curriculum which *** provides the student A DEPTH AND BREADTH OF KNOWLEDGE APPROPRIATE TO THE FIELD and to the level of degree."

What does this mean? Obviously it means whatever the director chooses that it should mean.

3. HECB 908.08 refers to "appropriate and accessible library, laboratory, and other facilities".

What does appropriate and accessible library, laboratory, and other facilities mean? Again it means whatever the director chooses to make it mean.

It is obvious from the scope and breadth of these regulations that they deliver absolute discretion and control over "schools" to the HECB and its executive director by way of accreditation and certification and, in fact, a determination as to whether or not the "school" will be allowed to continue to exist without complete compliance to the directives of the HECB and its commissioner. This is obvious from the rules taken as a whole and specifically from the last paragraph of HECB 904 which, after calling for no less than 18 specific items of information, goes on to state: "If on the basis of the above information the Board is unable to determine the nature and activities of a school and its programs, or to approve degrees or names, the Board will require any additional information needed to make such judgments." The scope of inquiry by the Board and its executive director is absolutely unlimited. This is established not only by the rules and regulations cited above but by Sec. 136A.64 of Minnesota Statutes which is the Sec. 4 of Chapter 201, Laws of 1975 which reads as follows: "As a basis for registration, schools shall provide the commission with such information AS THE COMMISSION NEEDS to determine the nature and activities of the school, including but not limited to the requirements for admission, enrollments, tuition charge, refund policies, curriculum, degrees granted, and faculty employed. The commission shall have the authority to verify the accuracy of the information submitted to it BY INSPECTION OR ANY OTHER MEANS IT DEEMS NECESSARY." (Emphasis added)

We are most avid and sincere about our contention that this law is unconstitutional. Accordingly we request and recommend that you, as the Hearing Examiner, make a formal recommendation to the HECB that they in turn request a formal opinion of the Attorney General of the State of Minnesota as to the constitutionality of Chapter 201 and any subservient rules and regulations as applied to the theological seminaries of the State of Minnesota. We would make such a request directly ourselves except that by law in Minnesota we have no standing to officially and formally request an opinion of the Attorney General. The HECB Director does have such standing. We are confident that such a formal opinion will hold the law unconstitutional.

Should our request be followed we stand ready to offer our services in formulating the question and supplying any further information about our institutions for inclusion in such a request to the Attorney General.

While I have stated that I was not going to cite the regulations

themselves except by way of a secondary reference I would like to explain why I have made such specific references. I would like to call your attention to Chapter 355, Laws of 1974, Sec. 69. This same chapter is codified into the Minnesota Statutes as Chapter 3.965. A copy of that law is attached for reference and convenience. In brief the law provides for the establishment of a joint legislative committee whose purpose and function is to review the rule making powers of administrative agencies under Chapter 15 of Minnesota Statutes. If in the view of a majority of the members of the committee a meritorious complaint against any rules and regulations is raised, that committee may suspend said rules pending further action by the legislative processes.

We have stated in the past that it was our intention to try and seek legislative correction at the recently closed session of the Minnesota Legislature concerning the application of this law to the theological seminaries. It seems that the outcome of that effort is not yet determined. One of our options therefore is to call to the attention of the joint committee referred to in MS 3.97 (Rep. Neil Hagerud) the rule making proposals that are before you, as the Hearing Examiner, today. It is our contention, first of all, that the law which requires these rules and regulations and authorizes them is unconstitutional, but secondarily the proposed rules and regulations themselves go far beyond the legislative intent of the lawmakers in passage of Chapter 201, Laws of 1975.

A review of the testimony before the legislative committees during the passage of Chapter 201 indicates that it was the clearly expressed legislative intent of the authors of the bill and the members of the legislative committees that discussed this bill to bring into control and authorize some limitation of the so called "diploma mill practices" that were defrauding student members of Minnesota's consumer population. Chapter 201 and these regulations obviously go way beyond that purpose and intent.

Accordingly we may ask the Chairman of the Joint Legislative Committee, pursuant to Chapter 3.97 of Minnesota Statutes to convene a hearing and to issue an order forestalling any further promulgation and enforcement of rules and regulations under Chapter 201.

It seems to us that such a course of events, i.e. either an Attorney General's opinion or suspension of the rules by the legislative committee, or both, would be much less costly and divisive and timely than forcing the issue to be adjudicated in the courts. Such adjudication could come about either by an attempt of enforcement by HECB or a possible refusal of compliance by any of the institutions affected. Refusal of compliance might well be accompanied by the positive action of seeking judicial interpretation and or enjoinder of enforcement as to Minnesota's Seminaries. The procedures that we are suggesting above could also save the time and expense of seeking injunctive relief in the courts by any of the parties charged with enforcement or affected by the act and its regulations.

It follows that the enforcement of the law and the implementation and enforcement of any rules and regulations should properly be held in abeyance pending the results of a formal opinion of the Attorney General. Accordingly we recommend such a course of procedure in the event that an Attorney General's opinion is sought.

Because of our position in relation to the basic legality of the law as distinct from the regulations we have not offered extensive remarks or criticisms concerning the proposed rules and regulations themselves except as they pertain to our position above.

Thank you, Mr. Greenberg. I should be pleased to respond to any questions that you might have and then to defer to members of the theological seminaries who are here and may wish to make statements for the record on behalf of their individual institutions.

Respectfully,

John F. Markert
Executive Director
Minnesota Catholic Conference

Sec. 69. Minnesota Statutes 1971, Chapter 3, is amended by adding a section to read:

3.965 Committee to review administrative rules

Subdivision 1. Composition; meetings. A legislative joint committee for review of administrative rules defined pursuant to sections 15.0411 to 15.0422, consisting of five senators appointed by the committee on committees of the senate and five representatives appointed by the speaker of the house of representatives shall be appointed. The committee shall meet at the call of its chairman or upon a call signed by two of its members or signed by five members of the legislature. The joint committee chairmanship shall alternate between the two houses of the legislature every two years.

Subd. 2. Review of rules by committee. The committee shall promote adequate and proper rules by agencies and an understanding upon the part of the public respecting them. It may hold public hearings to investigate complaints with respect to rules if it considers the complaints meritorious and worthy of attention and may, on the basis of the testimony received at the public hearings, suspend any rule complained of by the affirmative vote of at least six members provided the provisions of subdivision 4 have been met. If any rule is suspended, the committee shall as soon as possible place before the legislature, at the next year's session, a bill to repeal the suspended rule. If the bill is defeated, or fails of enactment in that year's session, the rule shall stand and the committee may not suspend it again. If the bill becomes law, the rule is repealed and shall not be enacted again unless a law specifically authorizes the adoption of that rule. The committee shall make a biennial report to the legislature and governor of its activities and include therein its recommendations.

Subd. 3. Public hearings by state departments. By a vote of a majority of its members, the committee may request any department issuing rules to hold a public hearing in respect to recommendations made pursuant to subdivision 2. The department shall give notice as provided in section 15.0412, subdivision 4 of a hearing thereon, to be conducted in accordance with section 15.0412. The hearing shall be held not more than 60 days after receipt of the request.

Subd. 4. Review by standing committees. Before the committee suspends any rule, it shall request the speaker of the house and the president of the senate to refer the question of suspension of the given rule or rules to the appropriate committee or committees of the respective houses for the committees' recommendation. No suspension shall take effect until the recommendation is received, or 60 days after referral. However, the recommendation shall be advisory only.

THE CONSORTIUM OF MINNESOTA SEMINARY FACULTIES

May 10, 1976

Bethel Theological Seminary
3949 Bethel Drive
St. Paul, Minnesota 55112
Tel. 612-633-6880

Luther Theological Seminary
2375 Como Avenue West
St. Paul, Minnesota 55108
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3000 Fifth St. N.W.
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Tel. 612-633-4311

Mr. Myron Greenberg
Office of Hearing Examiner
1745 University Avenue, West
Room 300
St. Paul, Minnesota 55104

In Re: Minnesota Statutes 136A.61 - 136A.71
Proposed Rules, Chapter Nine:
HECC 901 - 1000
Private Institution Registration

Dear Mr. Greenberg:

The purpose of this letter is to add to the testimony of the Consortium of Minnesota Seminary Faculties and Presidents of the six theological seminaries of the State of Minnesota concerning the above captioned proposed rules and regulations.

You will recall that we have offered testimony to the original hearing and the hearing of April 6th, 1976. My understanding is that the testimony on the hearing was closed following the adjournment of the hearing of April 22nd. Therefore the record remains open for submission of further testimony until May 12, 1976.

I believe that you are aware of our contention that the law as applied to theological seminaries is unconstitutional. We would also contend that this result being so obvious on its face was not the intent of the legislature to include seminaries within the purview of the law. I also note, in reviewing the law, that there is not any discretion granted to the Higher Education Coordinating Board in terms of excluding "schools".

You will also recall that at the hearing at which I testified April 6th there was some minor exchange and seeming disagreement between Mr. Mark Levinger and myself concerning whether or not the Attorney General would issue an opinion concerning constitutionality of this law as applied to seminaries. I have checked the statute in question and the Attorney General's opinions issued concerning this matter and I am inclined at this time to agree with Mr. Levinger that the Attorney General's office probably cannot be prevailed upon and probably would not respond to a request for the issuance of an

President - Louis H. Gunnemann
United Theological Seminary
of the Twin Cities
3000 Fifth St. N.W.
New Brighton, Minnesota 55112

Vice President - Rev. William Baumgaertner
St. Paul Seminary
2260 Summit Avenue
St. Paul, Minnesota 55101

Secretary-Treasurer - Wendell W. Frerichs
Luther Theological Seminary
2375 Como Avenue
St. Paul, Minnesota 55108

opinion on the constitutionality of the law as applied to seminaries. I expressed this opinion, however, only as it relates to the official published statutory opinion of an Attorney General. I believe that the Attorney General's office might issue a private opinion to you or to the Director of the HECB (in the spirit of confidentiality which is respected between attorney and client) in which he would venture an evaluation of our contention that the law is unconstitutional as applied to seminaries. I therefore would still persist in urging you to request such an opinion or in urging you to suggest to the Director of HECB that he should seek such an opinion from his attorney, i.e. the Attorney General.

Please know that I am not unmindful that the position that we have assumed in the testimony that we have presented to you as the Hearing Commissioner presents no little dilemma. The dilemma has been further heightened by the fact that the legislature has now passed a law which delays the effective date of Chapter 201, Laws of 1975, until March 1, 1977. By way of comment on this latter development I can assure you that it remains the intent of the six theological seminary Presidents to follow through on their pronounced goal of seeking legislative relief from the legislature in the early days of the '77 Session. In the meantime, however, you are faced with issuing a ruling and recommendation to the HECB concerning the promulgated rules and regulations.

One more observation is in keeping before making some suggestions. We are familiar with the proposed changed rules and regulations submitted to you by Dr. Harvey Stegemoeller, the Executive Director of the Minnesota Private College Council. Without commenting upon the content or the changes that he has suggested we merely go on record as stating that we do not believe that the revised rules and regulations are any more acceptable to us than the original proposed rules and regulations or for that matter Chapter 201 of the law itself.

I believe that it is within your power and jurisdiction to formulate an opinion on our contention of the constitutionality. Your opinion may or may not be influenced by any advice that you are able to elicit from the Attorney General. If you were to render an opinion that would be in agreement with our contention, and obviously I think you should, it would put the HECB and its Director in a position of not enforcing the law as it might apply or pertain to seminaries. I can offer you no precedent for such a procedure that is known to me. I can make the following observations which I think at least logically lend themselves to such a procedure.

1. By statute and by law in Minnesota any legislation passed by the legislature is severable. This means that sections of the law which are not legal or might fail a constitutional test may be excised from the law and allow the remainder of the law to stand provided, of course, that it makes sense and has proper application. While this may not be entirely appropriate in this instance I think that the intent and the logic of the severability of law as a legislative policy in Minnesota lends itself to the administrative decision not to apply a law in an unconstitutional manner as we suggest.

2. In challenging the constitutionality of laws it is a classic distinction to approach the law in two ways. One is to challenge the constitutionality of the law on its face and the other is to challenge the constitutionality of the law on its application. The courts recognize the distinction and on some occasions have found that a law may be constitutional on its face but unconstitutional in its application and vice versa. Thus the courts have traditionally recognized that prudent and constitutional application and implementation of the law as distinct from the letter of the law on its face is valid. Such distinction can and should be followed where feasible and possible. We think that such is the case here at least during the interim when we can seek corrective legislation.

Accordingly, what I am suggesting is that your findings and recommendations to the HECB should be to exclude seminaries from the operation of the law by an appropriate regulation. Such a regulation would be based upon a conclusion that to include seminaries would be a violation of constitutional law, legislative intent and need in terms of the remedy which the legislature sought to correct. Specifically may I offer then the following proposed amendments to HECB 902:

1. HECB 902, Sub. C, should be amended by adding a sentence to read as follows:

   "(4) A theological seminary is not a "school" as defined herein;"

2. HECB 902 should be amended by adding a paragraph to read as follows:

   "(1) "Theological seminary" means a school at the post AB (Bachelor Degree granting) level which is recognized, supported, endorsed or utilized by a religion or church or their agencies and instrumentalities, and whose primary purpose is the provision of professional education and preparation for ministry, priesthood or rabbinet, and with a duly constituted program, faculty and governance to meet these objectives."

The result of the suggested amendments as outlined above would be to exempt seminaries from the operation of the proposed rules and regulations because they would not be schools within the meaning of the ranks.

Please advise if any further information from us would be of any assistance to you in your deliberations and conclusions. We

stand ready to proffer whatever help we are able.

Respectfully submitted,

John F. Markert

John F. Markert
Executive Director
Minnesota Catholic Conference

JFM/mw

cc: Consortium of Minnesota Seminary Faculties
Honorable Jerome M. Hughes
Honorable Myrton O. Wegener
Honorable J. Robert Stassen
Honorable Peter X. Fugina
Honorable David Beauchamp
Mr. Richard Hawk
Mr. David B. Laird, Jr.
Dr. Harvey Stegemoeller

(e) A school subject to registration will be granted approval to use the term "college" in its name if the school meets the standards of HECB 907, does not offer an associate degree, but proposes to use the term "college" in conjunction with the terms "business" ("commercial"), "barber" or "beauty" to signify the offering of technical and specialized programs providing preparation for career opportunities in the fields of business and barber and beauty services.

HECB 907 Policies and Standards

After reviewing the recommendations of its staff and advisory committee, the Board by resolution shall annually adopt and publish a list of registered schools, pursuant to HECB 903, of schools approved to offer specified degrees, pursuant to HECB 905, and of schools approved to use the names "college", "academy", "institute" and "university" in Minnesota, pursuant to HECB 906. The criteria which will be used to make these determinations with respect to approval are those listed below:

(a) has an organizational framework with administrative and teaching personnel to provide the educational programs it purports to offer;

(b) has financial resources sufficient to meet the school's financial obligations, including refunding tuition and other charges consistent with its stated policy in the event of dissolution of the institution, or in the event of claims for refund against the institution, to provide service to the students as purported, and to provide educational programs leading to degrees as purported;

(c) operates in conformity with generally accepted budgeting and accounting procedures. One such set of standards are those adopted by the National Association of College and University Business Officers;

(d) provides for an educational program leading to the degree it purports to offer;

(e) provides appropriate and accessible library, laboratory and other physical facilities to support the educational program offered;

(f) has a policy on freedom or limitation of expression and inquiry for faculty and students which is published or available on request;

(g) provides information to students and prospective students concerning:

(1) comprehensive and accurate policies relating to student admission, evaluation, suspension and dismissal;

(2) clear and accurate policies relating to the granting of credit for prior education, training, and experience and for courses offered by the school;

(3) current schedule of fees, charges for tuition, required supplies, student activities, housing and all other standard charges;

(4) policy regarding refunds and adjustments for withdrawal or modification of enrollment status;

(5) procedures and standards used for the selection of recipients, as well as the terms of payment and repayment, for any financial aid program;

(h) uses for promotion and student recruitment only publications and advertisements which are truthful and do not give any false, fraudulent, deceptive, inaccurate or misleading impression with respect to the school, its personnel, programs, services or occupational opportunities for its graduates;

(i) has any compensated recruitment agents operating in Minnesota identify themselves as agents of the school when talking to or corresponding with students and prospective students.

Failure to meet any one of these criteria will not necessarily prevent a school from being given approval. Rather a judgment will be made on the basis of a pattern which in the whole supports a legitimate educational program, sufficient finances and sound institutional policies and practices.

HECB 908 Records

Any school located or operating within Minnesota must maintain permanent records for all students enrolled therein at any time. Each school must provide a plan for the preservation of such records which meet the following criteria:

(a) There shall be at least one copy of the records held in a secure depository;

(b) An appropriate official shall be designated to provide copies of the record or transcript when requested to do so by the student;

(c) Provision shall be made for the preservation of student records after the school shall cease to exist. Such provisions shall be consistent with clauses (a) and (b);

(d) In instances where the school does not have a binding agreement for the preservation of student records after the school shall cease to exist, the school shall demonstrate financial security for the preservation of student records after the school shall cease to exist in the form of a continuous surety bond or trust arrangement.

HECB 909 Disapproval and Appeal

If approval for degree or name is not granted by the Board, the applying school shall have the opportunity for a hearing pursuant to Minn. Stat., Chapter 15. If a school wishes a hearing, it has 30 days from the date of notification of the Board's decision to present a written request for a hearing.

HECB 910 Withdrawal of Approval

The Board may, after notice and upon providing an opportunity for a hearing, pursuant to Minn. Stat., Chapter 15 if requested by the parties adversely affected, refuse to renew, revoke or suspend any approval for any one or any combination of the following grounds:

(a) violation of any provisions of the act or of this chapter;

(b) furnishing to the executive director false, misleading or incomplete information;

(c) presenting to prospective students information relating to the school which is false, fraudulent, deceptive, inaccurate in a material respect or misleading;

(d) refusal to allow reasonable inspection or supply reasonable information after written request therefor by the executive director.

HECB 911 Conditional Approval

Notwithstanding anything in this chapter to the contrary, the Board may grant conditional approval of degrees, and names for periods of less than one year if to do so would be in the best interests of currently enrolled students or prospective students of registered schools.

HECB 917 Rights, Duties and Obligations Not Impaired by Minnesota Statutes, Chapter 141

Except as expressly stated to the contrary in this chapter, any action taken pursuant to Minn. Stat., Chapter 141 (1974) by the Commissioner of Education of the state of Minnesota in relation to any school, person or other entity does not in any manner alter the rights, duties and obligations of that school, person or entity under this chapter or under Minn. Stat. 136A.61-.71.

HECB 918 Exemption For Religious Schools

(a) The following schools are exempt from this Chapter: Any school
(1) which is substantially owned, operated or supported by a bona fide religious church or religious organization;
(2) whose programs or courses are solely or primarily designed for, aimed at, and attended by persons who sincerely hold or seek to learn the particular religious faith or beliefs of that church or religious organization; and
(3) whose programs or courses are solely or primarily intended to prepare its students to become ministers of, enter into some other vocation closely related to, or conduct their lives in consonance with, the particular faith of that church or religious organization.

(b) This exemption shall not extend to any school which, through advertisements, solicitations, or any other means, represents to any students or prospective students that the school, its aims, goals, missions, or purposes, or its programs or courses are in any way different than those criteria described above. In particular, this exemption shall not extend to any school which represents to any student or prospective student that its programs or courses will in any way prepare the student for a vocation outside that particular religious faith, or provide the student with a general educational program recognized by other schools or the broader educational, business, or social community as being substantially equivalent to the educational programs offered by schools not exempt from Minnesota Laws 1975, Chapter 136A.61-.71 and this chapter of regulations.

(c) Departments or branches of schools which meet the criteria listed in (a) shall be exempted even if the school as a whole is not exempted.

(d) Whether or not a particular school is exempted, nothing in Minnesota Laws, Chapter 136A.61-.71 or this chapter of regulations shall be interpreted as permitting the Board to determine the truth or falsity of any particular set of religious beliefs.

HECB 990 Separability

If any rule, or portion thereof, within this chapter, or the application thereof to any school or other circumstances, is held or declared invalid, the remainder of the chapter, and the application of such rule or portion to other schools or circumstances shall not be affected thereby.

THE CONSORTIUM OF MINNESOTA SEMINARY FACULTIES

January 25, 1977

Bethel Theological Seminary
3949 Bethel Drive
St. Paul, Minnesota 55112
Tel. 612-633-6880

Luther Theological Seminary
2375 Como Avenue West
St. Paul, Minnesota 55108
Tel. 612-646-2712

Northwestern Lutheran
Theological Seminary
1501 Fulham St.
St. Paul, Minnesota 55108
Tel. 612-645-6434

School of Divinity
St. John's University
Collegeville, Minnesota 56321
Tel. 612-363-7761

Saint Paul Seminary
2260 Summit Avenue
St. Paul, Minnesota 55101
Tel. 612-698-0323

United Theological Seminary
of the Twin Cities
3000 Fifth St. N.W.
New Brighton, Minnesota 55112
Tel. 612-633-4311

Minnesota Higher Education
Coordinating Board
Suite 400 - Capitol Square
550 Cedar Street
St. Paul, Minnesota 55101

In Re: Chapter 201, Laws 1975
HECB 901 - 1000

Dear Board Member:

In keeping with testimony which was presented to the Hearing Examiner on the above captioned proposed rules I am enclosing a copy of a proposed amendment to those rules. (Yellow sheet) I am aware that the staff of HECB has conveyed to you their recommendation for a new section for the regulations concerning the treatment of Seminaries. Mr. Laird has supplied me with a copy of their proposed section 918. The enclosed suggestion adopts Mr. Laird's format but deletes and changes some of the original language. In my opinion the exemption in the form originally proposed by staff is not an exemption in reality. By withdrawing any exemption from any school which prepares 'in any way' students for educational goals other than those primarily intended by Seminaries, the exemption will fail in all cases.

Seminaries assure their students that in the event their goals of life and education change they will be able to transfer credits from the seminaries to other institutions of learning to prepare for different goals. To force seminaries into a situation of refusing this convenience and assurance would be counterproductive to the welfare and best interests of the students.

In addition I would like to keep the record clear as to the future actions of the seminaries relative to Chapter 201. It is our intent to seek legislation as soon as possible to totally exempt Minnesota Seminaries from the operation of this law. A copy of the proposed legislation is enclosed for your information. (Green sheets) You will note that it uses a completely different technique than the format of exemption suggested in the staff proposal to your rules. It states that "Seminaries", by definition in the law, would

President - Louis H. Gunnemann
United Theological Seminary
of the Twin Cities
3000 Fifth St. N.W.
New Brighton, Minnesota 55112

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St. Paul Seminary
2260 Summit Avenue
St. Paul, Minnesota 55101

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Luther Theological Seminary
2375 Como Avenue
St. Paul, Minnesota 55108

be exempt from the law. This method of exemption is clean and concise and does not invoke the jurisdiction of the HECB to determine (on the basis of discretion) whether or not the exemption applies.

We are pleased that the staff of HECB has recommended to you that the Rules incorporate an exemption for Minnesota Seminaries. The proposed form of exemption by staff fails to accomplish its purpose. In keeping with the suggested format by staff we offer our amended version of their amendment. We hope the Board will adopt either our proposed amendment to the staff exemption or an exemption similar to the language and technique set forth in the proposed legislation. The original proposal of amendment (HECB 918) is, frankly, unacceptable. Our preference is the format and technique proposed by the enclosed prospective bill for the Legislature.

It is my intention to attend the meeting of the Board on Thursday, January 27, 1977. I will be happy to respond to any questions you might have individually or collectively and either before or during your meeting.

Sincerely,

John F. Markert

John F. Markert
Executive Director
Minnesota Catholic Conference

JFM/mw
Encl:

cc: Msgr. William Baumgaertner
Rev. Michael Blecker
Dr. Dayton D. Hultgren
Dr. Carl Lundquist
Rev. Kiernan Nolan
Dr. Lloyd A. Svendsbye
Msgr. Terrance Murphy
Mr. Kevin Hughes, Esq.
Mr. David B. Laird, Jr.
Dr. Harvey Stegemoeller

Amendment to Proposed Rules

CHAPTER NINE: HECB 901-1000

Private Institution Registration

918 EXEMPTIONS. (a) The following schools are exempt from this Chapter: (1) Any school which is substantially owned, operated, or supported by a bona fide religious church or religious organization; (2) Any school whose programs are primarily designed for, intended as, and attended by persons who sincerely hold or seek to learn the particular religious faith or beliefs of that church or religious organization; and (3) Any school whose programs or courses are primarily intended to prepare its students for priesthood, deaconite, ministry or rabbinet or to enter into a vocation closely related to and in consonance with the particular faith of that church or religious organization.

(b) This exemption shall not apply to any school which represents to its students (or prospective students) in any way that its programs, aims, goals, or purposes are different in any way from those criteria set forth in 918 (a) above.

(c) Departments or branches of schools which meet the criteria listed in 918 (a) shall be exempt even if the school as a whole is not exempt.

(d) Whether or not a particular school is exempt, nothing in Minnesota laws, Chapter 136A.61 through 71, or this chapter of regulations shall be interpreted as permitting the Board to determine or interpret any particular religious beliefs or doctrine.

RECEIVED
MAR 7 - 1977
ATTORNEY GENERAL
102 STATE CAPITOL
ST. PAUL, MINN. 55101

A BILL FOR AN ACT

AMENDING MINNESOTA STATUTES 136A.62 BY ADDING A NEW SUBDIVISION: AMENDING MINNESOTA STATUTES 136A.62 THROUGH 136A.71 BY ADDING A NEW SUBDIVISION FOR EXEMPTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statues 1975, 136A.62 through 136A.71 are amended as follows:

136A.61 (POLICY.) The legislature has found and hereby declares that the availability of legitimate courses and programs leading to academic degrees offered by responsible private institutions of post-secondary education and the existence of legitimate private colleges and universities are in the best interests of the people of this state. The legislature has found and declares that the state can provide assistance and protection for persons choosing private institutions and programs, by establishing policies and procedures to assure the authenticity and legitimacy of private post-secondary education institutions and programs.

136A.62 (DEFINITIONS.) Subdivision 1. WORDS, TERMS, AND PHRASES. The following words, terms and phrases shall have the meanings ascribed to them in this section for the purposes of sections 136A.61 to 136A.71.

Subd. 2. (COMMISSION.) "Commission" means the Minnesota higher education coordinating commission.

Subd. 3. (SCHOOL.) "School" means any individual, partnership, company, firm, society, trust, association, corporation, or any combination thereof, which (a) is, owns, or operates a private, non-profit post-secondary education institution, (b) provides a post-secondary instructional program or course leading to a degree whether or not for profit, or (c) uses the term "college", "academy", "institute" or "university" in its name.

Subd. 4. (DEGREE.) "Degree" means any award given by a school for completion of a program or course which is designated by the term degree, associate, bachelor, baccalaureate, masters, or doctorate, or any other award which the commission shall include by regulation.

Subd. 5. (RECORDS.) "Records" means those school documents and files containing student data relating to academic credits, grades, degrees awarded, periods of attendance, and such other matters as the commission shall determine by regulation.

Subd. 6. (ACCREDITING INSTITUTION.) "Accrediting Institution" means an established accrediting association or organization recognized by either the Office of Education of the United States Department of Health, Education & Welfare or the Council on Post Secondary Accreditation.

Subd. 7. (THEOLOGICAL SEMINARY.) "Theological Seminary" means a school at the post AB (Bachelor Degree granting) level which is recognized, supported, endorsed or utilized by a religion or church or their agencies and instrumentalities, and whose primary purpose is the provision of professional education and preparation for ministry, priesthood or rabbinet, and with a duly constituted program, faculty and governance to meet these objectives.

136A.63 (REGISTRATION.) All schools located within Minnesota shall register annually with the commission. The commission shall have the authority to require those schools located outside Minnesota which offer programs or courses within Minnesota to register annually.

136A.64 (INFORMATION.) As a basis for registration, schools shall provide the commission with such information as the commission needs to determine the nature and activities of the school, including but not limited to, requirements for admissions, enrollments, tuition charge, refund policies, curriculum, degrees granted, and faculty employed. The commission shall have the authority to verify the accuracy of the information submitted to it by inspection or any other means it deems necessary.

136A.65 (APPROVAL OF DEGREES AND NAME.) No school subject to registration shall grant a degree unless such degree is approved by the commission, nor shall any school subject to registration use the name "college", "academy", "institute" or "university" in its name without approval by the commission. The commission shall establish procedures for approval, including notice and an opportunity for a

hearing pursuant to chapter 15 if such approval is not granted. If a hearing is requested, no disapproval shall take effect until after such hearing.

136A.66 (LIST.) The commission shall maintain a list of schools authorized to grant degrees and schools authorized to use the name "college", "academy", "institute" or "university", and shall make such list available to the public.

136A.67 (UNAUTHORIZED REPRESENTATIONS.) No school and none of its officials or employees shall advertise or represent in any manner that such school is approved or accredited by the commission or state of Minnesota except that any school which is duly registered with the commission, or any of its officials or employees, may represent that the school is registered with the commission.

136A.68 (RECORDS.) After August 1, 1975, all schools located in this state must maintain permanent records of all students enrolled therein at any time. The commission may require schools to provide a plan acceptable to the commission for preserving all such records for at least ten years. The commission may require that such plan include the filing of a continuous surety bond or a deposit of funds in trust in an amount not to exceed $20,000 for the purpose of preserving records after such school ceases to exist.

136A.69 (FEES.) The commission may collect reasonable registration fees not to exceed $200 for an initial registration of each school and $150 for each annual renewal of such existing registration.

136.70 (RULES AND REGULATIONS.) The commission shall adopt policies and prescribe appropriate rules and regulations to carry out the purposes of sections 136A.61 to 136A.71. Such rules and regulations may include delegation of authority for implementation of sections 136A.61 to 136A.71 to the commission's executive director.

136A.71 (INJUNCTION.) Upon application of the attorney general the district courts shall have jurisdiction to enjoin any violations of sections 136A.61 to 136A.71.

136A.72 (EXEMPTIONS.) A school shall be exempt from sections 136A.61 to 136A.71 if it is located, administered, and headquartered in Minnesota and meets any one of the following conditions: (1) Is

a Theological Seminary; (2) Is fully accredited by an accrediting institution; (3) Is an "eligible institution" as defined by either Minnesota Statute 136A.101, Subd. 4, or Minnesota Statute 136A.19, Subd. 4,; (4) Is a "participating institution of higher education" as defined in Minnesota Statutes 136A.28(f); (5) Is otherwise excused for reasons to be established by the commission.