

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File 454

ATTORNEY GENERAL

Gary Hansen
Special Assistant
Attorney General

February 15, 1979

Lee E. Sheehy
Special Assistant
Attorney General

296-1288

In the Matter of the Proposed Adoption of Rules of Crime Control Planning Board Governing the Procedures for Distributing Money to State, Regional and Local Agencies

The above-captioned rules have not been approved by this office or filed with the Secretary of State for the below-enumerated reasons:

1. "Criteria and Priorities": As noted in my memorandum dated August 23, 1978, to William Lucas, Assistant Director of C.C.P.B., "criteria and priorities" are absent despite their reference in the agency's Adoption Authorizing Resolution and in Minn. Stat. 299A.03, subd. 8. You argue on behalf of the agency two grounds upon which this office should accept the proposed rules, however. First, you argue that the "criteria and priorities" requirement was "inadvertently and unintentionally" included in the authorizing legislation. Canons of statutory construction do not permit this office to disregard the clear, unambigious text of the law. See Minn. Stat. § 645.16. To adopt the agency's first argument would be to ignore the clear, unambigious requirements of the statute. Further, the agency's own documents do not dismiss the statutory terms "criteria" and priorities" as erroneous. Both the agency Authorizing Resolution Adopting the Rules and the agency Notice of Hearing make references to "criteria" and/or "priorities". You also argue that the "criteria and priorities" requirement should be ignored because of its relationship to the statewide plan which is exempted from the APA rulemaking process. You argue that the "criteria and priorities" concept is merely a subset of the statewide plan; and since the latter matter is exempted from the APA, the former funding standards must also be exempted. This office does not agree. Minn. Stat. § 299A.03, Subd. 8, does discuss both the statewide plan and the funding requirements. They do not appear as mere subsets or inextricably intertwined. Rather, the statewide plan requirement in Subd. 8 is a separate consideration from the funding "criteria and priorities" requirement. And the APA requirement relating to "criteria and priorities" is clear from the statute's own text.

   Your second ground relates to the concept of severability of the "procedures" for funds distribution from the "criteria and priorities" upon which the funds will be distributed. This office frequently permits severability, where appropriate, and agrees

with your general contention that rules should not be rejected for the absence of a desirable, but severable, provision.

Severability is generally permitted under law unless the existing provision is dependent upon or incomprehensible without the absent provision. See Minn. Stat. § 645.20. As such, procedural rules which are severable from the "criteria and priorities" substantive provisions absent from these rules will be approved by this office. However, several of the rules proposed for adoption herein are dependent upon or incomprehensible without these substantive provisions. Therefore, this office will review and approve rules under the severability standards set forth above if the agency chooses to resubmit specific rules for our consideration. Finally, the agency adopts by incorporation Hearing Examiner Findings No. 26 and 29 which appear to be contrary to the position taken by the agency in its arguments to this office by counsel. The agency must address this apparent contradiction.

2. Incorporation by Reference: This office does not adopt your interpretation of the requirements of Minn. Stat. § 15.0412, Subd. 4, relating to incorporation of material by reference. Therefore, all incorporations by reference of provisions such as LEAA requirements must be approved by the Chief Hearing Examiner. E.g., CCPB 105 (A)(3), (B)(2), (C)(4), and D; CCPB 106.

3. Board Authorizing Adoption Resolution: The Board resolution relating to rules adoption incorrectly states the matters addressed and adopted by rule. The resolution reflects adoption of "criteria and priorities" which were not adopted, as discussed above. A new resolution must be passed and an order reflecting its passage must be authorized and executed.

4. Required Number of Copies: AttyGen 302 requires a certain number of copies of each relevant document. Sufficient numbers of copies were not submitted to this office.

5. Certificate of Compliance with Rule-Making Procedures: This certification must be executed by counsel representing the agency, not by this office.

6. "Shall": The Hearing Examiner's Finding No. 12(a)(1), the agency's finding by incorporation, relating to the word "shall" misstates the presumption of the word's effect under state law. See Minn. Stat. § 645.44, Subd. 16. While the significance of this misunderstanding is unclear to this office, the agency findings, or perhaps an amendment to the rule, must clarify this confusion.

If you have any questions, do not hesitate to call me.

LES:mb
Enclosure
cc: Duane Harves, Chief Hearing Examienr

454 - Crime Control Planning Board

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 8/3 Temporary Rule —

Resubmitted and Received 2/6/79

DUE DATE 8/23 / 2/16/79

a. Returned to Agency w/o filing w/Secy of State 8/23 / 2/15
b. Approved _____ Date Sent Back to Agency _____

- -

1. X Rules as Adopted _____
2. X Rules as Proposed _____
3. ? Certificate of Board's Authorizing Resolution, where applicable _____ (See Hearing memo)
4. X Order for Hearing _____
5. X Notice of Hearing _____
   X (i) Sufficiency _____
6. X Secretary of State's List _____
7. X Certificate of Acquisition of Secretary of State's List _____
8. X Affidavit of Mailing _____
   X (i) At least 30 days prior to hearing ~~XXXX~~ _____
9. Statement of Need and Evidence _____
10. X Hearing Examiner's Report _____
11. X Agency's Findings of Fact _____
12. X Certificate of Board's Resolution Adopting Rules, where applicable _____
13. X Order Adopting _____
14. X Report of Chief Hearing Examiner _____
    X (i) Finding of No Substantial Change _____
    N/A? (ii) Permission to Incorporate by Reference, where applicable _____ (See Hearing memo)
15. ? Certificate of Compliance with Rulemaking Procedures _____
16. N/A Copy of Notice of Intent to Solicit Outside Opinion, where applicable _____
17. N/A Petition by Public, where applicable _____.

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : LEE E. SHEEHY
Special Assistant
Attorney General

DATE: 2/5/79

FROM : GARY HANSEN
Special Assistant
Attorney General

PHONE: 296-7573

SUBJECT: Rules of Crime Control Planning Board

This is in response to your August 23, 1978 memorandum to William L. Lucas of the CCPB. I have returned the documents that were submitted to you earlier as well as the additional documents you requested. As to your seven specific comments, our reply is as follows.

1. We have enclosed an Order Adopting the Rules and a resolution authorizing that Order. We have also enclosed Findings of Fact.

2. A review of the board's minutes seems to indicate that it neglected to specifically authorize the calling of a hearing. It is the board's position, however, that its resolution of January 26, 1978 adopting Draft of Proposed Rules and July 27, 1978 adopting the final version of the rules, as well as its acquiescence and participation in the hearing itself is sufficient evidence of the board's intent to authorize a hearing to be held. If this is insufficient the board could go through the seemingly meaningless formality of retroactively authorizing a hearing which has already been conducted.

3. We have enclosed a copy of the rules as proposed and published in the State Register.

4. We have enclosed an Affidavit of Receipt of Secretary of State's List.

5. We have enclosed a Certificate of Compliance with Rule Making Procedures.

6. You indicate that Rules 105 B(2), D may incorporate other material by reference. In fact, the references to compliance with LEAA requirements are not intended to incorporate any specific body of rules. Rather it is a notification to applicants that the board is restrained from making grants which might violate federal statutes and that the applicants should therefore familiarize themselves with those requirements--whatever they might be. With this explanation I assume the approval of the chief hearing examiner is not necessary.

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7. You correctly note that the rules address "procedures" and not "criteria and priorities." It is the board's position that the last two terms were inadvertently and unintentionally included in the authorizing legislation. (See Minn. Stat. § 299A.03 subd. 6 (Supp. 1977) providing that the board shall prepare a "comprehensive statewide plan for the improvement of law enforcement and criminal justice throughout the state"--which necessarily includes funding criteria and priorities--and further providing that that plan shall not be adopted as rules.) Additionally, it is the board's position that, due to several factors peculiar to the CCPB and its relationship with both state and federal governments, it is impossible to promulgate rules concerning criteria and priorities. Therefore, the board has chosen to promulgate such rules as it can--those dealing with procedures--and is dealing with the legislature to clarify the conflict in Minn. Stat. § 299A.03 (Supp. 1977). I assume that since these rules are authorized by statute they can be approved even though the board has not enacted rules in other areas.

I hope this new material and these explanations will enable you to approve the board's rules. If you have questions or need yet more documentation, please contact me.

GH:lkr
Enc.
cc: Jacqueline Reis
Joseph Marolt

STATE OF MINNESOTA
CRIME CONTROL PLANNING BOARD
6TH FLOOR, 444 LAFAYETTE ROAD
ST. PAUL 55101
TELEPHONE: (612) 296-3133

RECEIVED
AUG 2 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

August 1, 1978

Mr. Michael B. Miller
Special Assistant Attorney General
G19K Administration Building
St. Paul, Mn. 55155

Dear Mr. Miller:

Enclosed are rules adopted by the Crime Control Planning Board pursuant to Minnesota Statutes 299A.03, Subd. 8, and the complete record of the hearing held prior to adoption of them. The rules and hearing record are submitted to you for review as to form and legality as required by Minnesota Statutes 15.0412, Subd. 4.

Thank you for your assistance in this matter. If you need any further information regarding these rules, please call me at 296-3963.

Sincerely,

William L. Lucas

WILLIAM L. LUCAS
Assistant Director

WLL/mbc

Enc.

ADMIN 1000 (Rev. 1/78) 454

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : WILLIAM L. LUCAS
Assistant Director
Crime Control Planning Board

DATE: August 23, 1978

FROM : LEE E. SHEEHY
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Adoption of the Rules of the Crime Control Planning Board Governing the Procedures, Criteria and Priorities for Distributing Money to State, Regional, and Local Agencies.

The above captioned rules have been returned to you. They have not been approved by this office. These rules must be submitted in compliance with AttyGen 302 which requires certain documents and certain numbers of copies of each document. If this memorandum does not clarify the requirements for submittal of rules to this office, I would be happy to meet with you and your attorney to discuss this matter further.

A quick perusal of the documents submitted indicates that the following necessary documents do not appear to be in the file:

1. Order Adopting Rules and Agency Findings of Fact: AttyGen 302(i) requires not only the Board resolution adopting a rule which you have provided, but an Order Adopting the Rules as well. See Exhibits H-2 and G-1. Similarly, an Agency Finding of Fact is required, even if it merely incorporates by reference the findings of the Hearing Examiner. See AttyGen 302(h) and Exhibit G-2.

2. Certification of Board's Authorizing Resolution: AttyGen 302(c)(3) requires a certificate of the Board's authorizing resolution relating to the calling of a hearing. See Exhibit B-2.

3. Copy of the Rules as Proposed: A copy of the rules as proposed and published in the State Register is preferable, although any copy of the proposed rules meets the requirements of AttyGen 302(b).

4. Affidavit of Receipt of Secretary of State: AttyGen 302(e) requires an Affidavit of Receipt of Secretary of State List. See Exhibit C-2.

5. Certificate of Compliance with Rulemaking Procedures: See Exhibit H-3.

6. Approval of Chief Hearing Examiner for Incorporations by Reference: Minn. Stat. § 15.0412, subd. 4 (1977 Supp.) requires that incorporations by reference in rules be approved by the Chief Hearing Examiner. It appears that the above captioned rules may contain certain incorporations by reference. If so, approval of the Chief Hearing Examiner in writing must be submitted to this office. E.g., CCPB 105(B)(2) and (D).

7. Criteria for Distribution of Money: I wish to remind the Agency that Minn. Stat. § 299 A 03, subd. 8, requires the Board to distribute the monies available under this program "consistent with procedures, criteria and priorities which are promulgated by rule." Failure to promulgate such criteria and priorities in the above captioned by rulemaking may well prove a fatal flaw.

If you have any questions or wish to discuss this matter further with me, please do not hesitate to call me at 296-1288.

LES/bw
cc: Gary Hanson
Special Assistant Attorney General

Duane Harves
Chief Hearing Examiner