

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File #5[redacted]

9/4/79 - received signed Order + Findings
Approved 9/5/79

Resubmitted Severed Rules 8/20/79 for 10 day period
Due: 8/30/79 - 8/23 Oral notice to Saffold that we need signed Order Adopting + Findings Not received by 8/30

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 5-30-79 Temporary Rule _____

Resubmitted and Received 6-11-79 / 7-23-79.

DUE DATE 6-19-79 - 7-1-79 / 8-2-79 Memo written 6/29 - Notified by phone 6/29

a. Returned to Agency w/o filing w/Secy of State 6-2-79
b. Approved 9/5 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable _____ Where?
4. Order for Hearing ✓
5. Notice of Hearing ✓ publicat is o.k. mailed one may be bad?
   (i) Sufficiency _____
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List _____ Only part of it
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable ✓ OK - Received w/ 2nd submiss Where
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓ Findings
    (i) Finding of No Substantial Change _____
    (ii) Permission to Incorporate by Reference, where applicable _____
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable _____
17. Petition by Public, where applicable _____.

7/10 - phone call from Saffold - granted extension for brief til 7/20

ATTORNEY GENERAL

Kenneth W. Saffold
Special Assistant
Attorney General

June 29, 1979

Joanne E. Hinderaker
Special Assistant
Attorney General

296-4692

In the Matter of the Proposed Rules Regarding Contractors Licenses, Definition of On-The-Job Supervision, License Examination and Renewal Fees, Apprentice Electrician Registration and Reinstatement of Contractor's Licenses.

The rules in the above-captioned matter have not been approved by this office and are being returned to you for the following reasons:

1. Attorney General Rule 302 (c)(3) requires, in the case of rules proposed by a Board, that "the person signing the order must be so authorized and that authority must be of record and attached to this order" (see Exhibit B-2 to the Attorney General Rules). Similarly, Attorney General Rule 302 (i)(2) requires, in cases in which a Board adopts a rule, that a document comparable to Exhibit H-2, should be prepared and must accompany the Order Adopting Rules. I can find no such documents in the record filed with this office. In the event that such documents were not prepared, the Board must take steps to remedy this defect by preparing said documents and including them with any resubmission of the rules, and the file, to this office.

2. In Rule 4 MCAR § 11.030 A, it appears that the proposed rule read "the Board shall institute proceedings pursuant to Subd. 9" while the rule as adopted states "the Board may institute proceedings pursuant to Minn. Stat. § 326.242 Subd. 9" (emphasis added). I can find no explanation or reference to this change in the record filed with this office. It appears that the "shall" was changed to "may" in this rule, in an attempt to conform to the language of Minn. Stat. § 326.242 Subd. 9 which states that "the Board may revoke, suspend, or refuse to renew any license issued hereunder." If this was the rationale for the change, the change is unnecessary. The statute grants the Board the authority and discretion to revoke, suspend or refuse to renew a license. The legislature did not mandate the Board to take any of these actions. However, when a rule such as § 11.030 articulates the specific grounds for non-renewal, a mandatory "shall" standard must be applied. To state that the Board may institute non-renewal proceedings suggests that the Board may arbitrarily decide to institute the proceeding in one case in which it "appears that the same responsible electrician has been designated by more than one contractor" and not in another. Such discretion is unreasonable and arbitrary and this rule, after such a major change, cannot be approved by this office. The rule need not duplicate the language of the statute in this case. The statute merely enables the Board to promulgate a rule which "make(s) specific the law" regarding revocation, suspension or non-renewal. (See Minn.

Stat. § 15.0412 Subd. 3). Unless the word "may" in the adopted rule is changed to the original "shall" in the rule, this rule will not be approved by this office.

3. Finally, in regard to Rule § 11.032 C, this office is in tentative agreement with both the Hearing Examiner and the Chief Hearing Examiner, and it is our position at present that the Board of Electricity does not have the statutory authority to require the registration of apprentices. Minn. Stat. § 326.242 clearly lists the licensing requirements for particular classes of workers in this area and Subd. 5 lists only minimal restriction for apprentices. Subd. 8 of the statute specifically refers to a requirement that fees be paid by every class but apprentices are not included in this subdivision. Because the legislature so clearly laid out requirements applicable to every class except apprentices, it appears that the statute does not grant express authority to promulgate and adopt § 1.032 C, nor does it appear that the statute evidences any implied authority in this regard.

   The Board, through its attorneys, has not briefed this issue for this office. We will entertain a brief on the issue of the statutory authority for Rule § 1.032 C, before reaching a final decision on this point. We request that any written argument on this point be submitted to our office no later than July 13, 1979. Specifically, we request that you address the case of Wallace v. Commissioner, 289 Minn. 220, 184 NW2d 588 (1971) which is cited in the Chief Hearing Examiner's memorandum. We also ask that you consider State of Minnesota v. Lloyd A. Fry Roofing Co., 246 NW2d 696 (1976). Alternate arguments are raised in Wisconsin's Environmental Decade, Inc. v. Public Service Commission of Wisconsin, 69 Wis 2d 1, 230 NW2d 243 (1975); and in Welsand v. State of Minnesota Railroad and Warehouse Commission, 251 Minn. 504, 88 NW2d 834 (1958) and you may also wish to address these cases. If you decide not to submit a brief to this office please notify me of your decision.

Upon consideration of the issues raised in this memorandum and any subsequent action taken by the Board on these rules, this file may be resubmitted to this office with three (3) copies of the rules as amended and of the other documents requested herein. Copies of the other pertinent documents in the file have been retained by this office. Please contact me if you have any questions regarding this memorandum.

JEH:mb
cc: Duane Harves
Marshall Whitlock
Prof. Melvin Goldberg

ATTORNEY GENERAL

KENNETH SAFFOLD
Special Assistant
Attorney General

September 6, 1979

JOANNE E. HINDERAKER
Special Assistant
Attorney General

296-4692

Rules as Approved in the Matter of the Proposed Adoption of Rules of The State Board Governing The Minnesota Electrical Act

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a copy of the signed Order Adopting Rules, submitted to our office on September 4, 1979 and the original signed Findings of Fact which was also submitted to this office on September 4, 1979. The remainder of the record has been previously returned to you.

If you have any questions in this regard, please contact me.

JEH/bw
Enclosure
cc: Duane Harves
Marshall Whitlock
Melvin Goldberg

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE BOARD OF ELECTRICITY

In The Matter of The Proposed Adoption of Rules of The State Board Governing The Minnesota Electrical Act

RULES AS AMENDED AND ADOPTED

4 MCAR § 11.030 requirements for securing an electrical contractors license. Definitions of responsibility of performance for Class "A" or Class "B" Master license holders who are employed by an electrical contractor to satisfy Minn. Stat. § 326.242, Subd. 6.

A. Each contractor shall designate the responsible electrician employed by him on his application for an electrical contractor's license. The Board shall not grant a new contractor's license if it appears that the responsible electrician so designated is also employed in the same capacity by any other electrical contractor. In the event that more than one previously licensed electrical contractor has designated the same responsible electrician on his application for a license renewal, the Board shall return the application to the contractors who shall have 15 days to resubmit their applications. If upon resubmission of the license application, it still appears that the same responsible electrician has been designated by more than one contractor, the Board shall institute proceedings pursuant to Minn. Stat. § 326.242, Subd. 9 of this section, for non-renewal of the ~~applications~~ licenses of

each contractor by whom the same responsible electrician is employed.

B. In addition to all other requirements of Minn. Stat. § 326.242, Subd. 6 the applicant for an electrical contractor's license shall supply the following information where required by law, before a contractor's license is issued:

1. Employer's Social Security account number
2. Workers' compensation insurance account number
3. Unemployment insurance account number
4. State withholding tax account number
5. Federal withholding tax account number
6. The name and address of:
   a) Each Partner or Venturer, if the applicant is a partnership or joint venture.
   b) The Owner, if the applicant is an individual proprietorship.
   c) The corporate officers if the applicant is a corporation.

4 MCAR § 11.031 definitions of personal "on-the-job" supervision as applied to Minn. Stat. § 326.242, Subd. 5, Apprentices. Personal on-the-job supervision shall require that the unlicensed person will have a licensed person present on the job and providing supervision the entire working day.

4 MCAR § 11.032 Licenses, Examination and Renewal Fees.

A. All licenses issued hereunder shall expire one year from the date of issuance.

B. The following fees shall be payable for examination, issuance and renewal:

1. For examination

   a) Class "A" Master - $35.00

   b) Class "B" Master - $20.00

   c) Class "A" Journeyman, Class "B" Journeyman, Installer or Special Electrician - $10.00

2. For issuance of original license and renewal

   a) Class "A" Master - $35.00

   b) Class "B" Master - $20.00

   c) Class "A" Journeyman, Class "B" Journeyman, Installer or Special Electrician - $ 7.50

   d) Electrical Contractor's licenses shall be renewed on September 1st of each year. Original & renewal fee - $10.00

~~C. Apprentice electrician registration. An apprentice electrician shall register with the State Electrical Board of Electricity on or before his ninetieth calendar day of employment. The annual registration fee shall be $5.00. He shall not be allowed to work on installations without personal on the job supervision of a licensed electrician.~~

C. ~~D.~~ Any Electrical ~~Contractor's license that is reissued after being revoked or suspended for statutory deficiencies described in Elec. 26, Revocation, shall pay a reinstatement cost~~ Contractor who seeks reissuance of his or her license after it has been revoked or suspended pursuant to Minn. Reg. Elec. 26 shall submit a reissuance fee of $100.00 before the license is reinstated. ~~by the Board.~~

APPROVED AS TO FORM AND LEGALITY

SEP 05 1979 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Joanne Hinderaker

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP - 5 1979
Joan Anderson Growe
Secretary of State

3:55 PM

RECEIVED
AUG 29 1979
STATE BOARD OF
ELECTRICITY

SEP 04 1979
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules of the State Board of Electricity Governing the Minnesota Electrical Act.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the State Hearing Examiner, George Beck, Hearing Examiner for the State of Minnesota on the 17th day of January, 1979, at 9:30 A.M. in Room 300 at 1745 University Avenue, St. Paul, Minnesota, after proper notice required by Minnesota Statutes Section 15.0412 was served upon all persons, associations or 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 heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as 4 MCAR § 11.030, 4 MCAR § 11.031 and 4 MCAR § 11.032 were adopted the 3rd day of April, 1979, and hereby ordered to be adopted pursuant to the authority vested in me as indicated in the attached resolution and by the provisions of M.S. § 326.241.

Warren Syndner

WARREN SYNDNER
Secretary, State Board of Electricity
State of Minnesota

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, C. B. Joriman, do hereby certify that I am executive secretary of the Board of Electricity, 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 Board of Electricity duly and properly called and held on the 3rd day of April, 1979, 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 Warren Snyder, one of the members of the Board of Electricity be and he hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board of Electricity, regarding contractors licenses, definition of on-the-job supervision, license examination and renewal fees, apprentice electrician registration and reinstatement of contractors licenses 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 acting as presiding officer at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 17th day of July, 1979.

C B Joriman

C. B. Joriman, Executive Secretary

Warren Snyder

Warren Snyder, Secretary

RECEIVED
SEP 04 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE BOARD OF ELECTRICITY

In the Matter of the Proposed Adoption of Rules of the State Board of Electricity Governing The Minnesota Electrical Act

FINDINGS OF FACT OF BOARD OF ELECTRICITY

The above-entitled matter came on for hearing before George Beck, Hearing Examiner for the State of Minnesota, on the 17th day of January, 1979, at 9:30 A.M. in Room 300 at 1745 University Avenue, St. Paul, Minnesota, after proper notice required by Minn. Stat. § 15.0412 was served upon all persons, associations or 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 heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards of criteria, and having confirmed the need for the above captioned rules, the Board finds the following:

NOW, THEREFORE, the FINDINGS OF FACT, CONCLUSION AND RECOMMENDATION of the Hearing Examiner are hereby adopted and incorporated herein except as rejected below. In addition, the Executive Secretary of the Board of Electricity makes the following:

FINDINGS OF FACT

The Hearing Examiner numbered his FINDINGS OF FACT 1 through 27. For ease of comparison, the Secretary's FINDINGS OF FACT will deal specifically with Findings 22 through 25 of the Hearing Examiner's report.

1. The finding concerns Number 22 through 25 of the Hearing Examiner's Findings of Fact relative to proposed Rule 4 MCAR Sec. 11.032C. 1/ The Hearing Examiner, although

---

1/ The proposed rule involves apprentice electrician registration.

agreeing that the Board has presented sufficient evidence to pass the statutory test of need and reasonableness, questions the Board's statutory authority to enact this proposed rule. The Board disagrees with the Examiner's findings, and declines revision of the section. Minn. Stat. § 326.241, subd. 2 authorizes the Board:

(4) To enforce the provision of Laws 1967. Chapter 602. . . .

(6) To adopt reasonable rules to carry out its duties under Laws 1967, Chapter 602 and provide for the amount and collection of fees for inspection and other services.

The purpose of the proposed provision is primarily for the benefit of the apprentice since in order to qualify to take a license examination, the apprentice on-the-job training must be verified by the employer. Since records are sometimes lost and the apprentice and his relationship with his employer is seldom tenuous, it is often difficult to document his training. The Board believes that the provision is necessary to enforce the statute. Furthermore, the proposed rule appears clearly authorized by the aforementioned section. The Board thus rejects this finding of the Hearing Examiner.

C. B. Joriman

C. B. JORIMAN
Executive Secretary
State Board of Electricity
State of Minnesota

STATE OF MINNESOTA
STATE BOARD OF ELECTRICITY
GRIGGS MIDWAY BLDG. — ROOM N-191
1821 UNIVERSITY AVENUE
SAINT PAUL, MINN. 55104

OFFICE OF THE
EXECUTIVE SECRETARY
(612) 297-2111

August 7, 1979

Mr. Kenneth Saffold
Attorney General's Office
515 Transportation Building
St. Paul, MN 55155

Dear Mr. Saffold:

The State Board of Electricity at their regular meeting on August 7, 1979 took the following action;

"Motion by Mr. Gerling, 2nd by Mr. Snyder, the Board sever § 11.032 C (registration of apprentices) from the proposed rules presented at the January 17, 1979 Public Hearing so that all the rest of the rules may be filed with the Secretary of State."
VOTE: 6 AYE'S - UNANIMOUS Action Approved and Carried."

Yours truly,

STATE BOARD OF ELECTRICITY

C.B. Joriman
Executive Secretary

CBJ:lmk

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Joanne Hinderaker
Special Assistant Attorney General

DATE: August 13, 1979

FROM : Kenneth W. Saffold

PHONE: 6-8995

SUBJECT: In the Matter of the Proposed Rules Regarding Contractors Licenses, Definition of On-The-Job Supervision, License Examination and Renewal Fees, Apprentice Electrician Registration and Reinstatement of Contractor's Licenses.

Pursuant to your July 31, 1979 memorandum, the State Board of Electricity has amended its proposed rules and severed § 11.032C which required the registration of apprentices. Having reviewed the record, it is our opinion that the severance of § 11.032C does not result in a substantial change in the rules as proposed.

Please find enclosed a copy of the action taken by the Board as well as copies of the amended rules.

Feel free to contact me if you have any questions in this regard.

KWS:dag

cc: Clarence Joriman

- 8/23: Told Ken S. by phone that I needed a signed order adopting + findings; my copies weren't signed/

As of 8/30 - He had not submitted such signed documents.

SEH Call Saffold When Approved

RECEIVED
AUG 20 1979
GENERAL
ADMINISTRATIVE AGENCIES

#523

PRINTED ON RECYCLED PAPER

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE BOARD OF ELECTRICITY

Not signed

In the Matter of the Proposed Adoption of Rules of the State Board of Electricity Governing The Minnesota Electrical Act

FINDINGS OF FACT OF BOARD OF ELECTRICITY

The above-entitled matter came on for hearing before George Beck, Hearing Examiner for the State of Minnesota, on the 17th day of January, 1979, at 9:30 A.M. in Room 300 at 1745 University Avenue, St. Paul, Minnesota, after proper notice required by Minn. Stat. § 15.0412 was served upon all persons, associations or 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 heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards of criteria, and having confirmed the need for the above captioned rules, the Board finds the following:

NOW, THEREFORE, the FINDINGS OF FACT, CONCLUSION AND RECOMMENDATION of the Hearing Examiner are hereby adopted and incorporated herein except as rejected below. In addition, the Executive Secretary of the Board of Electricity makes the following:

FINDINGS OF FACT

The Hearing Examiner numbered his FINDINGS OF FACT 1 through 27. For ease of comparison, the Secretary's FINDINGS OF FACT will deal specifically with Findings 22 through 25 of the Hearing Examiner's report.

1. The finding concerns Number 22 through 25 of the Hearing Examiner's Findings of Fact relative to proposed Rule 4 MCAR Sec. 11.032C. 1/ The Hearing Examiner, although

---

1/ The proposed rule involves apprentice electrician registration.

agreeing that the Board has presented sufficient evidence to pass the statutory test of need and reasonableness, questions the Board's statutory authority to enact this proposed rule. The Board disagrees with the Examiner's findings, and declines revision of the section. Minn. Stat. § 326.241, subd. 2 authorizes the Board:

(4) To enforce the provision of Laws 1967. Chapter 602. . . .

(6) To adopt reasonable rules to carry out its duties under Laws 1967, Chapter 602 and provide for the amount and collection of fees for inspection and other services.

The purpose of the proposed provision is primarily for the benefit of the apprentice since in order to qualify to take a license examination, the apprentice on-the-job training must be verified by the employer. Since records are sometimes lost and the apprentice and his relationship with his employer is seldom tenuous, it is often difficult to document his training. The Board believes that the provision is necessary to enforce the statute. Furthermore, the proposed rule appears clearly authorized by the aforementioned section. The Board thus rejects this finding of the Hearing Examiner.

C. B. JORIMAN
Executive Secretary
State Board of Electricity
State of Minnesota

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, C. B. Joriman, do hereby certify that I am executive secretary of the Board of Electricity, 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 Board of Electricity duly and properly called and held on the 3rd day of April, 1979, 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 Warren Snyder, one of the members of the Board of Electricity be and he hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board of Electricity, regarding contractors licenses, definition of on-the-job supervision, license examination and renewal fees, apprentice electrician registration and reinstatement of contractors licenses 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 acting as presiding officer at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 17th day of July, 1979.

C B Joriman

C. B. Joriman, Executive Secretary

Warren Snyder

Warren Snyder, Secretary

CERTIFICATE OF BOARD'S

ADOPTION OF RULES RESOLUTION

I, C. B. Joriman, do hereby certify that I am executive secretary of the Board of Electricity, 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 Board of Electricity, duly and properly called and held on the 3rd day of April, 1979; 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 4 MCR Section 11.030 through.032 be and they hereby are approved and adopted, pursuant to authority vested in us by M.S. 326.241 and that Warren Snyder, one of the members of the Board of Electricity, be and hereby is authorized to sign an order adopting those rules."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 17th day of July, 1979.

C B Joriman

C.B. Joriman, Executive Secretary

Warren Snyder

Warren Snyder, Secretary

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE STATE BOARD OF ELECTRICITY

RECEIVED
NOV 20 1978
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Adoption of Rules of the State Board of Electricity Governing Licensing

ORDER FOR HEARING

To effectively implement State Board of Electricity, the Executive Secretary of the State Board of Electricity deems it necessary to consider adoption of the proposed captioned above pursuant to authority vested in me by M.S. 326.241.

NOW, THEREFORE, IT IS ORDERED this 14th day of November 1978, that a public hearing on the proposed rules captioned above be held in room 300, 1745 University Avenue, St. Paul, Minnesota, 17, 1979 at 9:30 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, and shall be published in the State Register.

STATE OF MINNESOTA

C.B. Joriman

C.B. Joriman
Executive Secretary
State Board of Electricity

TRANSMITTAL - MESSAGE SLIP

TO: Joanne Underaker	LOCATION: 102
DATE: 6/6/79	TIME:
FROM: Kenneth Raffold	LOCATION: 515 Transportation

TRANSMITTAL ACTION

- [ ] Review and see me
- [ ] Review and return
- [ ] Prepare reply for my sig.
- [ ] Reply and send me copy
- [ ] For your approval
- [ ] For your information
- [ ] For signature
- [ ] As we discussed
- [x] As you requested
- [ ] Take appropriate action
- [ ] Notify staff

CALL OR VISIT

NAME

FROM

PHONE NO.

- [ ] Called
- [ ] Was here to see you
- [ ] Please call
- [ ] Will call again
- [ ] Returned your call

MESSAGE

RECEIVED
JUN 11 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Admin 1010 (Rev. 9-76) (55)

☐ OVER

Reject

(1) No Bd Resolutions
(2) Changed a shall to may w/o any criteria to govern

(3) Statutory authority issue
Where is cover letter to Ch, HE?

What is the argument here

(4) Asle [Ken Saffold]

(5) see 326.01 (9) plumber's apprentice
(13) Steamfitter's apprentice

#4

M I N N E S O T A
STATE BOARD OF ELECTRICITY
1954 University Avenue
St. Paul, Minn. 55104

MINUTES OF REGULAR BOARD MEETING APRIL 3, 1979 (TUESDAY) 10:00 A.M. - ST. PAUL

#1 OPENING
Review of applications from 9:00 A.M. to 10:00 A.M.
Meeting called to order at 10:00 A.M. Mr. Thoemke presiding.

Roll call, those present:Messrs. Thoemke,Hill,Passe,Gerling, Hanson,SNyder,Holsing,Draisey, Mrs. Kroening.
Also present: Messrs. Joriman, Quinn, Foley

SPECIAL ORDER OF BUSINESS

1. Mr. Ken Saffold, Attorney General's Office, suggested changes in the Rules and Regulations accepted by the Board at the Special Board Meeting held March 23, 1979.
Motion by Mr. Snyder, 2nd by Mr. Gerling, the Board change the word shall to may on the 15th line of the 1st page of Rules as Proposed.
VOTE: 6 AYE'S - UNANIMOUS Action: Approved and CArried.

Motion by Mr. Passe, 2nd by Mrs. Kroening,the Board delete the last sentance of 4 MCAR § 11.030 Section A.
VOTE: 6 AYE'S - UNANIMOUS Actinn: Approved and Carried.

Motion by Mr. Gerling, 2nd by Mr. Snyder, the Board strike the language in 4 MCAR § 11.032 D. and add Any electrical contractor who seeks reissuance of his or her license after it has been revoked or suspended pursuant to Minn. Reg. Elec. 26 shall submit a reissuance fee of $100.00 before the license is reinstated and be it resolved that the rules relating to Proposed Rule Regarding Contractor's licenses, Definition of On-the-job Supervision, License Examination and Renewal Fees, Apprentice Electrician Registration and Reinstatement of Contractors Licenses be and they hereby are approved and adopted pursuant to authority vested in us by M.S. § 326.241 and that John Thoemke, President of the Minnesota Board of Electricity, be and hereby is authorized to sign an order adopting those rules.
VOTE: 8 AYE'S - UNANIMOUS Action: Approved and Carried.

2. Mr. Joseph D. Baber, 1110 East Rose, St. Paul, an applicant for a Minnesota Maintenance license examination appeared before the Board at 10:30 A.M. and discussed his application.
Motion by MR. Hanson, 2nd by Mr. Passe, that Mr. BAber's application be held over till the next meeting.
VOTE: 8 AYE'S - UNANIMOUS Action: Carried.

#2 READING OF MINUTES OF PREVIOUS BOARD AND COMMITTEE MEETINGS
Minutes of Regular Board Meeting March 22, 1979 and Special Board Meeting March 23, 1979.
Motion by Mr. Hanson, 2nd by Mr. Passe, the Board approve the minutes of March 22, 1979 and March 23, 1979 as read.
VOTE: 6 AYE'S - UNANIMOUS Action: Carried

#32 A. DISBURSEMENTS B. SPECIAL EXPENSES & REFUNDS C.FINANCIAL REPORTS & MISC.

a) Disbursements

Payroll register for pay period ending 3/13/79	$13,123.95
DISBURSEMENT TRANSMITTAL LETTERS (Batch #65)	37,444.79
" " " (Batch #66)	792.50
" " " (Batch #67)	25,619.56

Motion by Mr. Gerling, 2nd by Mr. SNyder, the Board approve the above disbursements
VOTE: 8 AYE's- UNANIMOUS Action: Carried.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE STATE BOARD OF ELECTRICITY

In the Matter of the Proposed Rules Regarding Contractors Licenses, Definition of On-the-Job Supervision, License Examination and Renewal Fees, Apprentice Electrician Registration and Reinstatement of Contractors Licenses.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck, at 9:30 a.m. on Wednesday, January 17, 1979, in the Office of Hearing Examiners in Room 300 at 1745 University Avenue in the City of Saint Paul, County of Ramsey, State of Minnesota.

This Report is a part of a rule hearing procedure pursuant to Minn. Stat. Sec. 15.0411 to Sec. 15.0417 and Sec. 15.052, to determine whether the proposed rules should be adopted and given the force of law. A copy of this Report may be obtained from the Office of Hearing Examiners for the cost of reproduction.

Members of the agency panel appearing at the hearing included the following Board members: June Kroening, public member; Alan Hill, electrical engineer; Gordon Gerling, public utility representative; Walter Passe, electrical contractor; Cecil Olsim, rural utility representative; Darwin Draisey, electrician; Jack Hanson, electrical contractor; and John Thoemke, President of the State Board of Electricity. Also appearing on behalf of the agency were: Clarence Joriman, Executive Secretary to the State Board of Electricity; and Erica Jacobson, Special Assistant Attorney General.

Sixteen public witnesses appeared and spoke at the hearing. Fifty people signed the rule hearing register. The State Board of Electricity submitted ten written exhibits. Twenty-six timely written comments were received from the public subsequent to the mailing of the Notice of Hearing through the end of the 20-day period for written comment following the hearing.

Based upon all testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On November 16, 1978, the State Board of Electricity filed the following documents with the Hearing Examiner:

(a) Order for Hearing;
(b) A copy of the proposed rules;
(c) A proposed Notice of Hearing; and
(d) A statement of the number of persons expected to attend and length of hearing.

2. On November 20, 1978, the State Board of Electricity filed with the Hearing Examiner a corrected copy of an Order for Hearing.

3. On December 4, 1978, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 1192.

4. On December 12, 1978, the State Board of Electricity 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 Minnesota Legislature and to all Minnesota Electrical Contractors license holders.

5. On December 15, 1978, the State Board of Electricity filed the following documents with the Hearing Examiner:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Mailing;
(d) The Affidavit of Receipt of the Secretary of State's list;
(e) The Secretary of State's list and the other mailing list;
(f) The list of witnesses and agency panel;
(g) The Statement of Need and Reasonableness; and
(h) The Board's Request for Information and Assistance.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

6. The record remained open through February 6, 1979, for the receipt of written comments.

7. The State Board of Electricity cites Minn. Stat. Sec. 326.241, subd. 2(6) as authority for the promulgation of the proposed rules. Minn. Stat. Sec. 326.241, subd. 2(6) is a portion of the Minnesota Electrical Act and provides:

The board shall have the power to:

> (6) Adopt reasonable rules to carry out its duties under Laws, 1967, Chapter 602 and to provide for the amount and collection of fees for inspection and other services. All rules shall be adopted in accordance with chapter 15.

8. The Act (Minn. Stat. Sec. 326.24 through Sec. 326.248) was enacted in 1967, and has been subsequently amended. The Act established the State Board of Electricity and empowered it, in addition to make rules to carry out the Act, to issue, renew, refuse to renew, suspend and revoke licenses provided for in the Act and to set fees for licenses. The purpose of the Act is to protect Minnesota consumers who purchase the services of electricians and electrical contractors.

9. General support for each of the proposed rules was expressed by a number of people (Exs. C, D, K) including the NECA Conference (Tr. p. 64), the Minneapolis Electrical Construction Industry Joint Apprenticeship Training Committee (Tr. p. 65), and the Supervisor of Inspections for the City of Minneapolis (Tr. p. 76). A few comments (Exs. E, G, I) were generally against any further regulation by rule.

4 MCAR Sec. 11.030 - Requirements for Securing An Electrical Contractors Licens

10. 4 MCAR Sec. 11.030 A. requires that a master electrician not be employed by more than one contractor, and provides that where two electrical contractors list the same master in their application upon resubmission, the Board may initiate a non-renewal of the licenses. It should be noted initially

that the reference to "subd. 9 of [illegible] section," in the rule subsection is unclear. If the reference is to the statute, then the full statutory citation should be given. The last sentence of this subsection talks of "non-renewal of the applications" which might more accurately be termed "non-renewal of the licenses". It is also noted that while the subsection requires the Board to institute proceedings in the case of attempted renewal using the name of a master electrician which is also used on another application for renewal, it does not specifically make such action by a contractor a ground for revocation under Minn. Stat. Sec. 326.242, subd. 9.

11. The Board stated that the master electrician is responsible for seeing that all electrical work is done according to the National Electrical Code and for seeing that qualified persons do the installation. The Board believes that the public is not well protected when a master can be employed by two or more contractors. The Board has uncovered one case in which the master supposedly employed by the contractor did not even know the contractor. (Ex. 5, p. 1) Several comments were received in support of this rule which suggested that a problem did exist and that the rule would enhance the quality of work and promote safety. (Ex. F; Ex. H, p. 1; Ex. J; Ex. L; Tr. p. 42-44, 73, 77) The International Brotherhood of Electrical Workers (IBEW) Local Union 110 suggested that one master electrician being employed by more than one shop is becoming increasingly common and has become known as "peddling the master". They suggest that some of these master electricians are not a part of the business, have not been to jobsites, or even checked any blueprints for the contractor in question. (Ex. Q, p. 1)

12. A few comments suggested that this would mean that some contractors would simply no longer be able to employ a master electrician, especially in rural areas. (Exs. A, O) One master electrician who is employed in two shops stated that a master can effectively be responsible for two smaller shops. (Ex. U) The Minnesota Electrical Association (MEA) stated that it was unreasonable to prohibit a master electrician from being a partner, owner or substantial stockholder in two or more electrical firms. The MEA did recognize that abuses were present, however. The MEA suggested that language be added requiring that a master electrician be a bona fide employee, owner, partner or substantial stockholder in the business and have a residence within reasonable commuting distance of the business. (Ex. W, p. 2) The rule is needed and reasonable as proposed and this is demonstrated by the record. The Board may, however, consider the suggestion of the MEA in regard to partners or shareholders.

13. 4 MCAR Sec. 11.030 B. adds six requirements to those already listed in the statute which must be supplied in an application for an electrical contractors license. The Board stated that it had found that some licensed electrical contractors had not applied for any of the first five numbers cited in the proposed rule and yet were employing people and doing electrical work for the public. (Ex. 5, p. 1) A substantial number of comments were received stating that the Board had no need for this information since it was not within their jurisdiction. (Ex. F; Ex. H, p. 1; Ex. J; Ex. L; Ex. O, p. 1; Tr. p. 18-20) Individual electrical contractors who had no employees

were especially concerned since they did not need to obtain some of the numbers and yet the proposed rule seems to require providing the numbers on an application. (Ex, B; Ex. N; Ex. S; Tr. p. 86) The MEA felt that the first five items requested were not the business of the State Board. (Ex. W, p. 2)

14. The IBEW Local Union 110 supported the proposed rule and stated that innocent homeowners were sometimes the victim of contractors who had not paid unemployment compensation or workers compensation insurance, thereby forcing individuals to seek recourse against the building owner. (Ex. O, p. 2) Another comment stated that these requirements were not a hardship and would ensure benefits for employees and the public. (Ex. Y) At the hearing, the President of the State Board stated that the intent of the rule was to require this information only where applicants were required to have the numbers. (Tr. p. 86-87) In its post-hearing comments, the Board suggested that the phrase "where required by law" be added to the subsection to clarify this intent. (Ex. 9)

15. If the proposed rule is amended so as to make it clear that individu contractors who are not required to obtain certain of these numbers are not required to supply them on an application, then the rule has been shown to be needed and reasonable. The Board does have a general responsibility pursuant to Minn. Stat. Sec. 326.242 to ensure that electrical contractors operate in a safe and lawful manner. Providing this information does not appear to be a serious burden.

4 MCAR Sec. 11.031 - Definitions of Personal "On-The-Job" Supervision As Applied to Minn. Stat. Sec. 326.242, subd. 5, Apprentices

16. This proposed rule interprets the statutory phrase "personal on-the-job supervision" to mean that an unlicensed person will have a licensed person present on the job and providing supervision the entire working day. The Board stated that in bringing cases to court under subdivision 5, it found that judges were of the opinion that the statute meant that licensed supervision could be provided five minutes or less per day due to the vague wording of the statute. The Board stated that in order to receive on-the-job training, skilled supervision must be provided at all times. (Ex. 5, p. 2) A large amount of comment was directed toward this proposed rule which expressed the opinion that a journeyman may have to leave a jobsite for a few minutes, such as to pick up materials, or for an emergency, and that routine work by apprentices should not have to stop because of this. (Ex. H, p. 1; Ex. J; Ex. L; Ex. P; Ex. R; Tr. p. 29) It was observed that it was not necessary for a licensee to be present in order for an apprentice to dig trenches. (Ex. O, p. 1) The MEA felt that requiring a licensed person to supervise an apprentice who is operating a trencher, drilling holes, engaging in clean up, or delivering material could be described as "featherbedding". The MEA favored full-time supervision by a licensee only where an apprentice is engaged on energized circuits and/or any and all energized conductors, devices or equipment. (Ex. W, p. 3)

17. In a carefully written comment, James D. Naylor of Naylor Electric Construction Company, Inc. in Bemidji, observed that the proposed rule disregards the fact that an apprentice is constantly learning the trade and

therefore will need less supervision as he proceeds towards becoming a journeyman. Naylor states that the master electrician is in the best position to make a judgment on the amount of supervision necessary since he is in fact the person responsible for proper installation of wiring and equipment and is familiar with the apprentices working for him. Naylor also suggests that the proposed rule is rigid and does not allow for a situation where the journeyman gets sick or has to return to the shop for parts or is working at a different part of the job. Naylor was also concerned about the economic impact of the proposed rule. He suggests that there is a shortage of "A" journeymen in the outstate areas and that under the proposed rule, work would often have to be delayed or halted when it would be reasonable to allow a "B" journeyman (who is classified as an apprentice) to proceed with the work for which they are qualified. (Ex. V; Tr. p. 31-39)

18. Other comments supported the proposed rule (Ex. T) and observed that the quality of work suffers when the apprentice is not supervised (Ex. Y) and that the courts, inspectors, contractors and journeymen need a definite and enforceable rule. (Tr. p. 74, 83) The IBEW Local Union 110 stated that they were aware of certain contractors and business places having unlicensed people do electrical work. (Ex. C, p. 2; Tr. p. 83)

19. At the hearing, the President of the State Board, John Thoemke, stated his belief that it would be permissible under the proposed rule if the licensed person left the job during the day. (Tr. p. 41) In a post-hearing written comment, however, Mr. Thoemke stated that it was the Board's position that the present practice of sending apprentices alone on the job or checking on them once or twice a day is not in compliance with the law or adequate to protect the safety of the public. It is the Board's intent that a licensed person be available or reasonably close by during all of the workday. (Ex. Z) The record does demonstrate that an abuse does exist in that apprentices are sometimes sent out on the job unsupervised from the shop and they never see a journeyman during the day. (Tr. p. 78-80, 66) The Board believes that a "common sense" enforcement of the proposed rule would provide a fair result.

20. The fears of some of the commentors that an apprentice could do no trench work without supervision is apparently unfounded. The statute only requires supervision where the apprentice is engaged in "electrical wiring". The rule can go no farther than the statute. The Board should consider adding language concerning electrical wiring to the rule for the purposes of clarity. The proposed rule appears to be needed. The more difficult question is whether the rigidity of the proposed rule which requires the licensed person to be "present on the job and providing supervision the entire working day" is reasonable. It is concluded that the rule, as proposed, is not so arbitrary that it can be classified as unreasonable within the meaning of Chapter 15. There is clearly a need for a definite rule without vagueness problems. It has often been held that an inspector need not necessarily enforce a rule to "the letter of the law" (see, e.g. Moskovitz v. City of Saint Paul, 218 Minn. 543, 16 N.W.2d 745, 749-750 (1944)). It is recommended, however, that the Board give serious consideration to Mr. Naylor's comments in making their policy decision as to the final form which this proposed

rule should take. The Board should consider whether or not the rule can be amended in any way so as to preserve the certainty of the proposed rule while allowing some of the flexibility which would appear to be practically necessary.

4 MCAR Sec. 11.032 - Licenses, Examination and Renewal Fees

21. 4 MCAR Sec. 11.032 A. and B. set the expiration of a license at one year and set out fees payable for examination, issuance and renewal. The Board is required to set fees pursuant to Minn. Stat. Sec. 326.242, subd. 8. The prior law had set the fees in the statute and the fees suggested in the proposed rule are the same as were contained in the statute prior to the 1976 amendment. A few comments opposed the fees, supported different fees or felt that all fees should be the same. (Exs. L, M, O) Others supported the fees as stated. (Ex. Q, p. 3; Ex. W, p. 4) The fees represent no change and have been shown to be needed and reasonable.

22. 4 MCAR Sec. 11.032 C. requires an apprentice electrician to register with the Board after three months of employment. The Board stated that the purpose of this rule was primarily for the benefit of the apprentice since in order to qualify to take a license examination, the apprentices on-the-job training must be verified by the employer. Since records are often lost, this rule would allow an apprentice to easily verify his training. (Ex. 5, p. 2) Several comments could not see the need for such registration (Ex. O, p. 2) and some commentors did not believe that family members should have to register (Exs. B, R, S). One person commented that the cost of the rule would exceed the benefits since most apprentices do not become journeymen. (Ex. H, p. 1) The MEA stated that indentured apprentices are already registered with the state apprenticeship apparatus and as for other "apprentices", a substantial number of these persons never progress far enough to obtain a license. (Ex. W, p. 4)

23. Several comments supported the proposed rule (Ex. T; Ex. U, p. 2; Ex. X; Tr. p. 16) and observed that where employers lose records or where the employer is mad at an apprentice, it is often difficult for the apprentice to document his training. (Ex. Q, p. 3; Tr. p. 81) One comment noted an ambiguity in the rule in that it does not specifically specify whether registration must occur only after the first time an apprentice works for three months or whether he is expected to also register on subsequent jobs. (Tr. p. 20-21)

24. In its post-hearing submission, the Board suggested that this rule be amended as follows:

> An apprentice electrician shall register with the State ~~Electrical~~ Board on or before his ninetieth calendar day of employment. The annual registration fee shall be $5.00. (Ex. 9)

So amended, the Board has presented sufficient evidence to pass the statutory test of need and reasonableness: It is recommended, however, that the Board reconsider, in light of the comments made, whether or not the problem of lost records is so serious as to justify this additional requirement. It should also be noted that the proposed amendment apparently does not use the Board's correct name.

25. The Board has not, however, documented its statutory authority to enact this proposed rule. Minn. Stat. Sec. 326.242 appears to authorize the Board to license and to set fees for a Class "A" master, Class "B" master, Class "A" journeyman, Class "B" journeyman, installer, special electrician, and electrical contractor. The only reference to apprentices, at subdivision 5 of Minn. Stat. Sec. 326.242 simply allows "any person" to work as an apprentice to a licensed electrician. The Examiner is unable to locate any authority for the Board to require registration or to assess a registration fee for apprentices.

26. 4 MCAR Sec. 11.032 D. would require an electrical contractor whose license is reissued after revocation or suspension to pay a fee of $100.00. The Board stated that approximately 1% of license holders ignore notification letters of license renewal and have their license suspended or revoked. This results in a large amount of administrative expense since the Board must suspend or revoke and must later notify the parties of license reinstatement when the deficiency is corrected. The Board believes that it is reasonable that this administrative expense should be paid by the small minority of offending persons. (Ex. 5, p. 2) The proposed rule received specific support (Ex. Q, p. 3; Tr. p. 81-82; Ex. W, p. 4). One comment stated that the rule, as proposed, was not narrow enough because it swept in one time offenders who might have been revoked or suspended due to mere error. The commentor suggested applying the penalty if there was more than one suspension in any three-year period. (Tr. p. 21-22)

27. It should be noted that a more proper cite to the rule referenced in the proposed rule would be Minn. Rule Elec 26. The rule would also benefit from some redrafting since as it is currently phrased the Board has the "license", rather than the "licensee", paying the reinstatement cost. The rule, as proposed, is needed and reasonable. Although the Board has not specifically documented the cost of reinstatement subsequent to revocation for nonpayment of fees the reinstatement cost proposed is not so manifestly unreasonable as to amount to an arbitrary action.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the State Board of Electricity gave proper notice of the promulgation of the proposed rules.

2. That the State Board of Electricity has statutory authority to take the action proposed, to wit, the promulgation of the proposed rules except in regard to 4 MCAR Sec. 11.032 C.

3. That the State Board of Electricity has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. That the State Board of Electricity has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record.

5. That the State Board of Electricity is not precluded from and should not neglect to consider further modification of the proposed rules despite a finding of need and reasonableness by the Hearing Examiner

provided that the modification is not substantial and is based upon evidence contained in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the proposed rules, with the exception of 4 MCAR Sec. 11.032 C., be adopted by the State Board of Electricity with attention given to the Findings of Fact herein.

Dated: February 21, 1979.

CECIL A. LEEK
Hearing Examiner

NOTICE

Pursuant to Minn. Stat. Sec. 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

Thereafter, the Board of Electricity shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. Sec. 15.052, subd. 4. 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 issues of substantial changes in the rule and compliance with Minn. Stat. Sec. 15.0412 within ten calendar days. The Board will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

#5

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JOHN THOEMKE
PRESIDENT OF STATE BOARD OF
ELECTRICITY

In the matter of the Proposed
Adoption of Rules of the State
Board of Electricity Governing the
Minnesota Electrical Act

ORDER ADOPTING
RULES

The above-entitled matter came on for hearing before the State Hearing Examiner, George Beck, Hearing Examiner for the State of Minnesota on the 17th day of January, 1979, at 9:30 A.M. in Room 300 at 1745 University Avenue, St. Paul Minnesota, after proper notice required by M.S. Section 15.0412 was served upon all persons, associations or 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 heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as 4 MCAR § 11.030, 4 MCAR § 11.031 and 4 MCAR § 11.032 are adopted this 3rd day of April, 1979, pursuant to authority vested in me by the State Board of Electricity, by the provisions of M.S. § 326.241.

John Thoemke, President
STATE BOARD OF ELECTRICITY
STATE OF MINNESOTA

ATTORNEY GENERAL

KENNETH W. SAFFOLD
Special Assistant
Attorney General

JOANNE E. HINDERAKER
Special Assistant
Attorney General
296-4692

July 31, 1979

In the Matter of the Proposed Rules Regarding Contractors Licenses, Definition of On-The-Job Supervision, License Examination and Renewal Fees, Apprentice Electrician Registration and Reinstatement of Contractor's Licenses

The rules in the above-captioned matter have not been approved by this office and are being returned to you for the following reason:

After consideration of the arguments contained in your Memorandum in Support of Proposed Rule § 11.032 C, this office supports the conclusion of the Hearing Examiner and the Chief Hearing Examiner, that the Board of Electricity does not have statutory authority to promulgate § 11.032 C. Minn. Stat. § 326.242 requires the issuance of licenses for every category enumerated therein except apprentices. Subdivision 8 of that statute further requires that fees be paid for examination, issuance and renewal of licenses, and apprentice fees are not listed in that statutory section. Had the Legislature intended the Board to require the registration of apprentices it could easily have so provided in the manner it did in Minn. Stat. § 326.242. See: State of Minn. v. Lloyd A. Fry Roofing Company, 310 Minn. 528, 246 N.W. 2d 696 (1976).

If the Board chooses to sever § 11.032 C. from the other rules, you may submit three amended copies of the rules as adopted and I will file the remainder of the rules with the Secretary of State's Office.

Feel free to contact me if you have any questions in this regard.

JEH/bw
cc: Duane Harves
Marshall Whitlock
Prof. Melvin Goldberg

1st Submission Working Copy

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE BOARD OF ELECTRICITY

In The Matter Of The Proposed Adoption Of Rules Of The State Board Governing The Minnesota Electrical Act

RULES AS ADOPTED

4 MCAR § 11.030 requirements for securing an electrical contractors license. Definitions of responsibility of performance for Class "A" or Class "B" Master license holders who are employed by an electrical contractor to satisfy Minn. Stat. § 326.242, Subd. 6.

A. Each contractor shall designate the responsible electrician employed by him on his application for an electrical contractor's license. The Board shall not grant a new contractor's license if it appears that the responsible electrician so designated is also employed in the same capacity by any other electrical contractor. In the event that more than one previously licensed electrical contractor has designated the same responsible electrician on his application for a license renewal, the Board shall return the application to the contractors who shall have 15 days to resubmit their applications. If upon resubmission of the license application, it still appears that the same responsible electrician has been designated by more than one contractor, the Board ~~shall~~ may institute proceedings pursuant to Minn. Stat. § 326.242, Subd. 9 of this section, for non-renewal of the ~~applications~~ licenses of

What's the basis for this decision

each contractor by whom the same responsible electrician is employed.

B. In addition to all other requirements of Minn. Stat. § 326.242, Subd. 6 the applicant for an electrical contractor's license shall supply the following information where required by law, before a contractor's license is issued:

1. Employer's Social Security account number
2. Workers compensation insurance account number
3. Unemployment insurance account number
4. State withholding tax account number
5. Federal withholding tax account number
6. The name and address of:
   a) Each Partner or Venturer, if the applicant is a partnership or joint venture.
   b) The Owner, of the applicant is an individual proprietorship.
   c) The corporate officers if the applicant is a corporation.

4 MCAR § 11.031 definitions of personal "on-the-job" supervision as applied to Minn. Stat. § 326.242, Subd. 5, Apprentices. Personal on-the-job supervision shall require that the unlicensed person will have a licensed person present on the job and providing supervision the entire working day.

4 MCAR § 11.032 Licenses, Examination and Renewal fees.

A. All licenses issued hereunder shall expire one year from the date of issuance.

B. The following fees shall be payable for examination, issuance and renewal:

1. For examination
   a) Class "A" Master - $35.00

b) Class "B" Master - $20.00

c) Class "A" Journeyman, Class "B" Journeyman, Installer or Special Electrician - $10.00

2. For issuance of original license and renewal

a) Class "A" Master - $35.00

b) Class "B" Master - $20.00

c) Class "A" Journeyman, Class "B" Journeyman, Installer or Special Electrician - $ 7.50

d) Electrical Contractor's licenses shall be renewed on September 1st of each year. Original and renewal fee - $10.00

C. Apprentice electrician registration. An apprentice electrician shall register with the State ~~Electrical~~ Board of Electricity on or before his ninetieth calendar day of employment. The annual registration fee shall be $5.00. ~~He shall not be allowed to work on installations without personal on the job supervision of a licensed electrician.~~

D. Any Electrical ~~Contractor's license that is reissued after being revoked or suspended for statutory deficiencies described in Elec. 26, Revocation, shall pay a reinstatement cost~~ Contractor who seeks reissuance of his or her license after it has been revoked or suspended pursuant to Minn. Reg. Elec. 26 shall submit a reissuance fee of $100.00 before the license is reinstated. ~~by the Board.~~

2nd submission

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE BOARD OF ELECTRICITY

In The Matter Of The Proposed Adoption of Rules Of The State Board Governing The Minnesota Electrical Act

RULES AS ADOPTED

4 MCAR § 11.030 requirements for securing an electrical contractors license. Definitions of responsibility of performance for Class "A" or Class "B" Master license holders who are employed by an electrical contractor to satisfy Minn. Stat. § 326.242, Subd. 6.

A. Each contractor shall designate the responsible electrician employed by him on his application for an electrical contractor's license. The Board shall not grant a new contractor's license if it appears that the responsible electrician so designated is also employed in the same capacity by any other electrical contractor. In the event that more than one previously licensed electrical contractor has designated the same responsible electrician on his application for a license renewal, the Board shall return the application to the contractors who shall have 15 days to resubmit their applications. If upon resubmission of the license application, it still appears that the same responsible electrician has been designated by more than one contractor, the Board shall institute proceedings pursuant to Minn. Stat. § 326.242, Subd. 9 of this section, for non-renewal of the ~~applications~~ licenses of

pg missing

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a) Class "A" Master - $35.00

b) Class "B" Master - $20.00

c) Class "A" Journeyman, Class "B" Journeyman, Installer or Special Electrician - $ 7.50

d) Electrical Contractor's licenses shall be renewed on September 1st of each year. Original & renewal fee-$10.00

C. Apprentice electrician registration. An apprentice electrician shall register with the State ~~Electrical~~ Board of Electricity on or before his ninetieth calendar day of employment. The annual registration fee shall be $5.00. ~~He shall not be allowed to work on installations without personal on the job supervision of a licensed electrician.~~

D. Any Electrical ~~Contractor's license that is reissued after being revoked or suspended for statutory deficiencies described in Elec. 26, Revocation, shall pay a reinstatement cost~~ Contractor who seeks reissuance of his or her license after it has been revoked or suspended pursuant to Minn. Reg. Elec. 26 shall submit a reissuance fee of $100.00 before the license is reinstated. ~~by the Board.~~

a) Class "A" Master - $35.00

b) Class "B" Master - $20.00

c) Class "A" Journeyman, Class "B" Journeyman, Installer or Special Electrician - $10.00

2. For issuance of original license and renewal

a) Class "A" Master - $35.00

b) Class "B" Master - $20.00

c) Class "A" Journeyman, Class "B" Journeyman, Installer or Special Electrician - $ 7.50

d) Electrical Contractor's licenses shall be renewed on September 1st of each year. Original & renewal fee-$10.00

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D. Any Electrical ~~Contractor's license that is reissued after being revoked or suspended for statutory deficiencies described in Elec. 26, Revocation, shall pay a reinstatement cost~~ Contractor who seeks reissuance of his or her license after it has been revoked or suspended pursuant to Minn. Reg. Elec. 26 shall submit a reissuance fee of $100.00 before the license is reinstated. ~~by the Board.~~

STATE OF MINNESOTA

In The Matter Of The Proposed Rules Regarding Contractors Licenses Definition Of On-The-Job Supervision, License Examination And Renewal Fees, Apprentice Electrician Registration And Reinstatement Of Contractors Licenses

MEMORANDUM IN SUPPORT OF PROPOSED RULE § 11.032C

STATEMENT OF THE FACTS

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck on January 17, 1979 pursuant to § 15.041 et seq. The rules were proposed for adoption by the State Board of Electricity.

Sixteen public witnesses appeared and spoke at the hearing. At least twenty-six comments were received from the public subsequent to the mailing of the Notice of Hearing through the end of the 20-day period for written comment following the hearing.

After affording interested persons an opportunity to present written and oral data, the Hearing Examiner concluded:__/

1. That the State Board of Electricity gave proper notice of the promulgation of the proposed rules.

2. That the State Board of Electricity has statutory authority to take the action proposed to wit, the promulgation of the proposed rules except in regard to 4 MCAR Sec. 11.032C.

__/ The complete report of the Hearing Examiner's report is included in the documents submitted to the Attorney General's Office for approval.

3. That the State Board of Electricity has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. That the State Board of Electricity has demonstrated the need for an reasonableness of the proposed rules by an affirmative presentation of facts in the record. . . .

(emphasis added.)

The Chief Hearing Examiner in his review of the proposed rules observed "that the Board has failed to make an affirmative presentation of facts establishing the reasonableness of rule 4 MCAR § 11.032C nor has it demonstrated that it has statutory authority to adopt the rules."

The purpose of the proposed provision is primarily for the benefit of the apprentice since in order to qualify to take a license examination, the apprentice on-the-job training must be verified by the employer. Since records are sometimes lost and the relationship between the apprentice and his employer is seldom tenuous, it is often difficult to document his training.__/

ARGUMENT

I. THE AUTHORITY OF THE STATE BOARD OF ELECTRICITY TO ADOPT REASONABLE RULES SHOULD BE BROADLY INTERPRETED.

The Minnesota Supreme Court has indicated that in construing statutes, the purposes behind the statute, its history, and the entire legislative act must be considered. In Knopp v.

__/ The Board documented the need and reasonableness of the rule by stating:

> The need for apprentice registration is for the person as well as the Board. To qualify to take an exam for a given license, one must have on the job training verified by the employer. In many cases, the person trying to get their job training time verified by past employers, finds it almost impossible because of deaths, lost payroll records, etc.
>
> It would eliminate the verification slips that show full time on-the-job training starting at the age of 8 years old.
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> The reasonableness of the regulation would be a starting time and the employer would be kept on the record by the Board for that person. When the person had completed the time required, the Board would have a record that would help in making the decision to allow the applicant to take the given test.

Gutterman, 258 Minn. 33, 102 N.W. 2d 689 (1960), the Court stated:

> Statutes must be construed with reference to the objects sought to be accomplished and that which is implied in a statute is as much a part of it as that which is expressed. . . .
>
> In determining legislative intent, courts may consider legislative history of the act, subject matter as a whole, purpose of legislation, and objects intended to be secured thereby. In construing a legislative act, a section thereof is not to be considered apart from other sections of the act, but the act is to be read and construed as a whole.

(Id. at 40-41, 102 N.W. 2d at 695 (citations omitted)). When the history and purposes behind the creation of the State Board of Electricity (hereinafter "Board") are considered, and when the entire licensing scheme is analyzed, it is clear that the legislature has given the Board ample authority to require the registration and collection of fees from apprentices.

In addition to considering these factors, courts have liberally construed statutory authority of agencies in areas involving the obtaining of information needed to carry out legislative mandates. The United States Supreme Court has recognized a broad power of regulatory agencies to become informed. In U.S. v. Morton Salt Co., 338 U.S. 632 (1950) the Federal Trade Commission ordered several corporations to file reports showing how they had complied with a court order enforcing an FTC cease and desist order. The defendants argued that the FTC had no statutory authority to require the reports. The Court rejected this argument, saying:

> The only power that is involved here is the power to get information from those who best can give it and who are most interested in not doing so. Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues of litigation, it does not follow than an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has a

> power of inquisition, if one chooses to call it that, which is not derived from the judicial function.

Id. at 642-643.

In State ex rel. International Union of Operating Engineers v. Buck, Director of Mediation Services, 289 Minn. 469, 184 N.W. 2d 805 (1971), a case in which the Court upheld certain powers of the Director of the Bureau of Mediation Services, the Minnesota Supreme Court recognized that administrative agencies must be given broad powers to carry out their duties, even if not expressly provided by statute:

> It is well recognized that the director, in determining and certifying representatives for collective bargaining purposes, is not confined to the powers specifically conferred by statute, and that his duties include those which are fairly within its scope and which are essential to the accomplishment of the main purpose for which the office was created, as well as those which, although incidental and collateral, are germane to or benefit the accomplishment of the principle purposes.

Thus, the courts have readily interpreted statutory language to uphold the authority of agencies to obtain information needed to fulfill their statutory duties.

II. THE BOARD'S AUTHORITY TO REQUIRE THE REGISTRATION OF AN APPRENTICE IS AUTHORIZED BY STATUTE.

The Board has utilized its broad rulemaking authority to adopt a regulation which allows the agency to effectively document records by requiring registration and an annual registration fee of apprentices.

The Minnesota legislature has granted all regulatory agencies a general rulemaking authority to adopt rules and regulations to carry out their powers and duties. Minn. Stat. § 15.0412 et seq.

It is not necessary to have specific statutory language authorizing the adoption of a regulation which allows for the registration of apprentice. The Court has recognized that a regulatory agency need not have specific authorization for all of its regulations. In Welsand v. Railroad and Warehouse Commission, 251 Minn. 508, 88 N.W. 2d 834 (1958) the Court observed:

> In vesting regulatory power in an administrative agency, the legislature need not expressly delineate with particularity or exactness each and every phase of the power so conferred, but may, in order to give the administrative function reasonable flexibility, leave the exact scope of the rulemaking power to reasonable implication and this includes an implied power to formulate necessary classifications and definitions within the designated area of regulation. One of the basic purposes of administrative regulation is to leave preciseness and detail of application to administrators who supposedly will bring an expert's familarity to bear upon the problems under consideration.

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The Chief Hearing Examiner cited Wallace v. Commissioner, 289 Minn. 220, 184 N.W. 2d 584 (1971) as authority for the Board's lack of statutory authority to adopt Rule § 11.032C. Wallace involved a review of a decision by the Tax Court, denying a deduction for medical expense payment. There the Court held that the effect of Minn. Stat. 1969, § 290.01, subd. 20, was to adopt the Federal definition of adjusted gross income as it existed in 1961. Since the legislature could not lawfully delegate its authority to Congress with respect to future modifications or changes in the tax laws, the 1964 amendment was without force and effect on Minnesota law.

In Wallace, the commissioner took the position that the Internal Revenue Code provisions relating to medical expenses were controlling. The commissioner conceded that the express limitation was not found because of a legislative oversight. The Court rejecting this argument stated "courts cannot supply that which the legislature purposely omits or inadvertently overlooks.

The instant case is clearly distinquishable. The Board does not allege an oversight on the part of the legislature. To the contrary it states that the legislature gave the express authority to the Board for adopting Rule § 11.032C. The legislature authorized the Board through Minn. Stat. § 326.241 Subd. 2(6):

> To adopt reasonable rules to carry out its duties under Laws 1967, Chapter 602 and to provide for the amount and collection of fees for inspection and other services. . . .

Because the object of Rule 11.032C relates to a class specifically enumerated by Minn. Stat. § 326.242, the enabling language of Minn. Stat. § 326.241 should be ascertained to carry into effect the legislative intent. This proceeds upon the supposition that the several sections were governed by one spirit and policy, and were intended to be consistent and harmonious. In this regard, each section is construed in the light of, or with reference to the other section. Minn. Stat. §§ 645.16, 645.17; Agassiz and Odessa Mut. Fire Ins. Co. v. Magnuson, 272 Minn. 156, 136 N.W. 2d 861 (1965); Northern Pacific Railroad Company v. Duluth, 243 Minn. 84, 67 N.W. 2d 635 (1954); Sullivan v. Credit River Township, 299 Minn. 176, 217 N.W. 2d 502 (1974).

CONCLUSION

Based upon the foregoing analysis, the adoption of Rule § 11.032C should be approved.

STATE OF MINNESOTA

In The Matter Of The Proposed Rules Regarding Contractors Licenses Definition Of On-The-Job Supervision, License Examination And Renewal Fees, Apprentice Electrician Registration And Reinstatement Of Contractors Licenses

MEMORANDUM IN SUPPORT OF PROPOSED RULE § 11.032C

STATEMENT OF THE FACTS

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck on January 17, 1979 pursuant to § 15.041 et seq. The rules were proposed for adoption by the State Board of Electricity.

Sixteen public witnesses appeared and spoke at the hearing. At least twenty-six comments were received from the public subsequent to the mailing of the Notice of Hearing through the end of the 20-day period for written comment following the hearing.

After affording interested persons an opportunity to present written and oral data, the Hearing Examiner concluded:__/

1. That the State Board of Electricity gave proper notice of the promulgation of the proposed rules.

2. That the State Board of Electricity has statutory authority to take the action proposed to wit, the promulgation of the proposed rules except in regard to 4 MCAR Sec. 11.032C.

__/ The complete report of the Hearing Examiner's report is included in the documents submitted to the Attorney General's Office for approval.

3. That the State Board of Electricity has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. That the State Board of Electricity has demonstrated the need for an reasonableness of the proposed rules by an affirmative presentation of facts in the record. . . .

(emphasis added.)

The Chief Hearing Examiner in his review of the proposed rules observed "that the Board has failed to make an affirmative presentation of facts establishing the reasonableness of rule 4 MCAR § 11.032C nor has it demonstrated that it has statutory authority to adopt the rules."

The purpose of the proposed provision is primarily for the benefit of the apprentice since in order to qualify to take a license examination, the apprentice on-the-job training must be verified by the employer. Since records are sometimes lost and the relationship between the apprentice and his employer is seldom tenuous, it is often difficult to document his training.__/

ARGUMENT

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CONCLUSION

Based upon the foregoing analysis, the adoption of Rule § 11.032C should be approved.

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Joanne Hinderaker
Special Assistant Attorney General

DATE: July 11, 1979

FROM : Kenneth W. Saffold

PHONE: 6-8995

SUBJECT: In The Matter Of The Proposed Rules Regarding Contractors Licenses, Definition Of On-The-Job Supervision, License Examination and Renewal Fees, Apprentice Electrician Registration and Reinstatement of Contractor's Licenses

Pursuant to your June 29, 1979 memorandum and our recent telephone conversation, this is to confirm that the Board of Electricity will submit additional documentation and material regarding the above captioned rules on July 20, 1979.

KWS:dag

RECEIVED
JUL 13 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

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Pursuant to your June 29, 1979 memorandum, the State Board of Electricity has submitted additional documents for the above-captioned matter.

Enclosed please find the following:

1. Adoption of Rules Resolution (3)
2. Authorizing Resolution (3)
3. Rules As Adopted (3) 1/

The Board has also submitted a memorandum in support of proposed Rule § 11.032C, and thus reaffirms its earlier position regarding its authority to adopt such a provision.

If you have any questions or if any documents are still not in proper form, please call my office. Thank you.

1/ The rules as adopted were changed from "may" to "shall", to conform with your recommendation.

RECEIVED
JUL 23 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE STATE BOARD OF ELECTRICITY

IN THE MATTER OF THE PROPOSED RULES REGARDING CONTRACTORS LICENSES, DEFINITION OF ON-THE-JOB SUPERVISION, LICENSE EXAMINATION AND RENEWAL FEES, APPRENTICE ELECTRICIAN REGISTRATION AND REINSTATEMENT OF CONTRACTORS LICENSES.	REPORT AND MEMORANDUM OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on January 17, 1979, before George A. Beck, a Hearing Examiner of the Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of the Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Board of Electricity on February 21, 1979; and

WHEREAS, the Board has, on April 3, 1979, adopted rules in the above-entitled matter pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Board, on April 16, 1979, submitted its adopted rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4 and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the rules as adopted are not substantially different from those proposed at the public hearing; and

WHEREAS, the Chief Hearing Examiner finds that the Board has not met all requirements of Minn. Stat. § 15.0412, Subd. 4, in that the Board has failed to make an affirmative presentation of facts establishing the reasonableness of rule 4 MCAR § 11.032 C. nor has it demonstrated that it has statutory authority to adopt the rules, thus failing to fulfill "any relevant substantive or procedural requirements imposed on the agency by law" as required by Minn. Stat. § 15.0412, Subd. 4 (see also Memorandum attached hereto and incorporated in this Report by reference).

NOW, THEREFORE, pursuant to the provisions of Minn. Stat. § 15.052, Subd. 4, and 9 MCAR § 2.111, the agency shall either withdraw rule 4 MCAR § 11.032 C. or reconvene the rule hearing. If it withdraws 4 MCAR § 11.032 C. it has the responsibility of

submitting the complete hearing record and the rules as adopted by the Board to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 23rd day of April, 1979.

Duane D. Harves

DUANE R. HARVES
Chief Hearing Examiner

M E M O R A N D U M

After a careful review of the entire rulemaking record, together with a review of the Minnesota Electrical Act and the existing rules of the State Board of Electricity, it is concluded that the Board lacks specific statutory authority to enact a rule requiring apprentice electricians to register with the Board and pay a fee in connection with that registration. As the Hearing Examiner in this matter pointed out in his Report, the only reference to apprentices in the Act is at Minn. Stat. § 326.242, Subd. 5, which allows any person to work as an apprentice to a licensed electrician. While the Board is authorized to set fees for seven classes of licensees which are specifically set out in Minn. Stat. § 326.242, there is no comparable specific authorization for apprentices.

In its cover letter dated April 11, 1979, which submitted this matter to the Chief Hearing Examiner, the Board states that the authority to register apprentices is contained in Minn. Stat. § 326.241, Subd. 2, which authorizes the Board to enforce the Minnesota Electrical Act and to adopt reasonable rules to carry out that Act. This general grant of rulemaking authority, however, cannot be to supply a substantive provision of the statute which the agency believes the Legislature should have included in the

first place. Wallace v. Commissioner, 289 Minn. 220, 184 N.W.2d 588, 594 (1971).

In the area of reasonableness, absent authority to adopt a rule, it would be illegal. Therefore, no presentation of facts would ever be sufficient to establish the reasonableness of an illegal act.

D.R.H.

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Lee Sheehy
Special Assistant Attorney General

DATE: May 29, 1979

FROM : Kenneth W. Saffold

PHONE: 6-8995

SUBJECT: Board of Electricity Rules

Please find enclosed the relevant documents relating to the changes in the proposed and adopted rules of the Board of Electricity.

The Board adopted the rules with minor changes in the proposed rules. These changes were largely the result of the findings and recommendations of the Hearing Examiner. As noted in the enclosed Findings of Fact, the Board specifically rejected the finding of the Hearing Examiner regarding the registration of apprentice, 4 MCAR Section 11.032C. Minn. Stat. § 326.241, Subd. 2(4), (6), appears to clearly authorize the registration of apprentice.

Enclosed are the following:

1. Rules as Adopted (5 copies),
2. Rules as Proposed,
3. Order of Hearing,
4. Secretary of State's List,
5. Affidavit of Receipt of Secretary of State's List,
6. Statement of Need,
7. Findings of Fact,
8. Order Adopting Rules,
9. Hearing Examiner's Findings of Fact and Recommendations,
10. Chief Hearing Examiner's Report,
11. Statement of Compliance with Manual Rulemaking Procedures,
12. Affidavit of Mailing,
13. Notice of Hearing,
14. Board's Request for Information and Assistance.

Please inform me if this is not adequate documentation.

If you have any questions or if any documents are not in proper form, please call me and hopefully I will be able to remedy the problem promptly. Thank you.

KWS:dag
Enclosures

RECEIVED
MAY 30 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

PRINTED ON RECYCLED PAPER

ATTORNEY GENERAL

KENNETH W. SAFFOLD
Special Assistant
Attorney General

June 1, 1979

JOANNE E. HINDERAKER
Special Assistant
Attorney General

296-4692

Board of Electricity Rules

As I indicated in our telephone conversation of May 31, 1979, I am returning the documents submitted to this office and I request that you provide us with three (3) copies of all of the jurisdictional documents listed in your memo of May 29, 1979, with the exception of the Secretary of State's list (one copy of which is sufficient).

I also request that you submit the entire record in this matter to our office, to facilitate our review. Upon resubmission of this file our twenty (20) day review period will commence.

If you have any questions in this regard, feel free to contact me.

JEH:bw
Enclosure

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

STATE OF MINNESOTA

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Rules as Proposed (All New Material)

4 MCAR §11.030 Requirements for securing an electrical contractors license. Definitions of responsibility of performance for Class "A" or Class "B" Master license holders who are employed by an electrical contractor to satisfy Minn. Stat. §326.242, subd. 6.

A. Each contractor shall designate the responsible electrician employed by him on his application for an electrical contractor's license. The Board shall not grant a new contractor's license if it appears that the responsible electrician so designated is also employed in the same capacity by any other electrical contractor. In the event that more than one previously licensed electrical contractor has designated the same responsible electrician on his application for a license renewal, the Board shall return the application to the contractors who shall have 15 days to resubmit their applications. If, upon resubmission of the license application, it still appears that the same responsible electrician has been designated by more than one contractor, the Board shall institute proceedings pursuant to subd. 9 of this section, for non-renewal of the applications of each contractor by whom the same responsible electrician is employed.

B. In addition to all other requirements of Minn. Stat. § 326.242, subd. 6, the applicant for an electrical contractor's license shall supply the following information before a contractor's license is issued:

1. Employer's social security account number
2. Workers compensation insurance account number
3. Unemployment insurance account number
4. State Withholding tax account number
5. Federal Withholding tax account number
6. The name and address of:
   a. Each partner or venturer, if the applicant is a partnership or joint venture.
   b. The owner, if the applicant is an individual proprietorship.
   c. The corporate officers if the applicant is a corporation.

4 MCAR § 11.031 Definitions of personal "On-the-job" supervision as applied to Minn. Stat. § 326.242, Subd. 5, Apprentices. Personal on-the-job supervision shall require that the unlicensed person will have a licensed person present on the job and providing supervision the entire working day.

4 MCAR § 11.032 Licenses, examination and renewal fees.

A. All licenses issued hereunder shall expire one year from the date of issuance.

B. The following fees shall be payable for examination, issuance and renewal:

1. For examination
   a. Class "A" Master - $35.00
   b. Class "B" Master - $20.00
   c. Class "A" Journeyman, Class "B" Journeyman, Installer, or Special Electrician - $10.00

2. For issuance of original license and renewal.
   a. Class "A" Master - $35.00
   b. Class "B" Master - $20.00
   c. Class "A" Journeyman, Class "B" Journeyman, Installer or Special Electricain - $ 7.50.
   d. Electrical Contractor's licenses shall be renewed on September 1st of each year. Original and renewal fee - $10.00.

C. Apprentice electrician registration. An apprentice electrician shall register with the State Electrical Board after three months of employment and shall pay an annual registration fee of five dollars. He shall not be allowed to work on installations without personal on-the-job supervision of a licensed electrician.

D. Any Electrical Contractor's license that is reissued after being revoked or suspended for statutory deficiencies described in Elec. 26, Revocation, shall pay a reinstatement cost of $100.00 before the license is reinstated by the Board.

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Kent Harbison, 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.

Dated: May 29, 1979

Kent Harbison

KENT HARBISON
Special Assistant Attorney General

STATE BOARD of ELECTRICITY

Proposed Rule Regarding Contractors Licenses, Definition of On-the-job Supervision, License Examination and Renewal Fees, Apprentice Electrician Registration and Reinstatement of Contractors Licenses

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in room 300 at 1745 University Avenue, St. Paul, Minnesota, on January 17, 1979 at 9:30 a.m. and continuing until all representatives of associations or 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 may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to George Beck, Office of Hearing Examiners, 1745 University Avenue, Room 300, St. Paul, Minnesota 55104 (612) 296-8108, the Hearing Examiner appointed to hear this matter either before the hearing or within five (5) working days after the close of the hearing. The Hearing Examiner may extend the time for receipt of the written comments for a period not to exceed twenty (20) calendar days from the date of the hearing.

The rule proposed for adoption, if adopted, would:
1. limit a Master from being employed by more than one electrical contractor at the same time. 2. Require additional business information before contractor's license is issued. 3.Define personal on-the-job supervision. 4. Set examination and renewal fees for all classes of licenses. 5. Establish an Apprentice Electrician Registration. 6. Set a reinstatement cost for electrical contractors who let license lapse for statutory deficiencies.

The proposed rule and amendments are attached hereto. One free copy of the proposed rules in their entirety may be obtained by writing to Mr. C.B. Joriman, Executive Secretary, State Board of Electricity, 1954 University Avenue , St. Paul, Minnesota 55104. Additional copies of the rules will be available at the door on the day of the hearing.

The rule and amendments are proposed pursuant to the authority vested in the Board of Electricity by the provisions of Minn. Stat. § 326.241.

It is not anticipated that adoption of the proposed rule and amendments will result in the expenditure of public moneys by local public bodies.

Any person may request notification of the date on which the Hearing Examiner's report will be available, after which date the Board may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Board. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's report), or to the Board (in the case of the Board's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Board's office and at the Office of

Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all the evidence which will be presented by the Board at the hearing justifying both the need for and the reasonableness of the proposed rule and amendments. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Minn. Stat.§§ 10A.01-10A.34 requires each lobbyist to register with the Ethical Practices Board within five (5) days after commencing lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is defined in Minn. Stat.§ 10A.01, subd. 11, as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

"Lobbyist" does not include any:

(a)Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b)Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony; or

(f) Stockholder of a family farm corporation as defined in § 500.24, Subd. 1, who does not spend over $250, excluding his own travel expenses, in any year in communicating with public officials.

Questions regarding the registration of lobbyists should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone number (612) 296-5616

November 14, 1978

C.B. Joriman
Executive Secretary

Board Exhibit # 6

STATE BOARD of ELECTRICITY

Proposed Rule Regarding Contractors Licenses, Definition of On-the-Job Supervision, License Examination and Renewal Fees, Apprentice Electrician Registration and Reinstatement of Contractors Licenses.

The Board's Request for Information and Assistance

This request was published in 20156 page of copy in the State Register Volume 2, Issue 14, October 11, 1977.

The only response was from the Finance Deptartment (Copy Enclosed). In light of the report from the Finance Department, the Board of Electricity will not pursue an increase of fee at this time.

No other input has been received to date .

C.B.Joriman
Executive Secretary

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Finance

TO : C. B. Joriman, Executive Secretary
State Board of Electricity

DATE: February 27, 1978

FROM : Allen Yozamp, Director
Budget, Planning and Control

PHONE: 5188

SUBJECT: Proposed Fee Changes

We have reviewed your proposed fee changes and cannot approve them at this time. Minnesota Statutes 214.06 requires that fees collected by the Board should equal, as closely as possible, the anticipated expenditures. Our records show that the fees collected in fiscal year 1977, $1,730,815, were greater than the costs, $1,598,848. All information available for fiscal year 1978 indicates that fees collected will again exceed costs. Fees collected through January 31, 1978 were $1,148,544 and the Board's appropriation for the year is $1,616,940.

The stated purpose of the fee changes is to raise the usual compensation of fee electrical inspectors from ten dollars to twelve dollars for each inspection trip. Raising the fees will not accomplish this purpose since the Board's spending is limited by its appropriation. When the Board's authorized spending or appropriation is increased, the fees can be changed so long as total receipts approximate total costs.

The proposed license fees for electrical tradesmen are approved since the fees reestablish the former statutory schedule and do not involve a change.

/mb
cc W. Likens

RECEIVED
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STATE BOARD OF ELECTRICITY

2 Item F

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption
of Rules of the State Board of Electricity
Adding 4MCAR §11.030, 4 MCAR §11.031 and
4MCAR §11.032 for Administrative Purposes.

CERTIFICATE

I hereby certify that the attached Exhibit 2 sheets constitute the complete list of persons, associations, and other interested groups who as of 2:10 o'clock P.M., this 22nd day of November, 1978, have requested pursuant to M.S. 1974 15.0412, 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 Donna M. Scott

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption
of Rules of the State Board of Electricity
Adding 4 MCAR§11.030, 4 MCAR§ 11.031 and
4 MCAR §11.032 for Administrative Purposes.

AFFIDAVIT OF MAILING

Linda M. Kalbler being first duly sworn, deposes and says:

That by the 12th day of December, 1978, at the City of Saint 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 Saint Paul, a true and correct copy there of, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of the State as well as to all persons listed on the attached sheet as presently being members of the Minnesota Legislature and all Minnesota Electrical Contractor's license holders.

Linda M Kalbler

Subscribed and sworn to before me
This 12th day of December 1978

Joanne P Peterson
(NOtary Public)

JOANNE P. PETERSON
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES SEPT. 19, 1984

Board Exhibit # 5

STATE BOARD OF ELECTRICITY

Proposed Rule REgarding Contractors Licenses, Definition of On-the-job Supervision, License Examination and Renewal Fees, Apprentice Electrician Registration and Reinstatement of Contractors Licenses.

Statement of Need and Reasonableness

4 MCAR § 11.030 A.

To establish the responsibilities of the Master license with a given electrical contractor which would give the public more protection. Without the adoption of this rule, it would be possible for a Master to be employed by several electrical contractors at the same time. This could create an atmosphere of price fixing on an installation, because of his access to all of the different contractor's records.

Also, the Master is responsible that all electrical work is done according to the National Electrical Code and that qualified persons do the installation. The Board has investigated many of the Masters who are employed by more than one electrical contractor and find that the public interest is not in the minds of the Master or electrical contractor.

In one case, the Master did not personally know the electrical contractor who he was supposedly employed by when they came in to be interviewed by the Board. The electrical contractor did not know the Master either.

The Board feels that it is reasonable to expect an electrical contractor and a Master to have a legitimate business setup where they can be reached at reasonable hours by the public. Several did not have a current address or the phone has been disconnected. One contractor even had an unlisted phone number.

4 MCAR §11.030 B.

The need and reaaonableness of this rule is that these are normal business requirements. The Board found in their interview with some of the licensed electrical contractors that some of them had not applied for any of the first five numbers required in this rule, and yet, indicated that they were employing people and doing electrical work for the public.

4 MCAR § 11.031

The need for this rule is that the Board has been criticized by court judges when the judge was to make a decision on a court case using only M.S. 326.242, Subd. 5 apprentices "Any person may work as an apprentice to a licensed electrician but shall do no electrical wiring except under the personal on-the-job supervision of such licensed electrician." It was their opinion that Subd. 5 meant licensed supervision could be provided five minutes or less per day, five minutes or less per week or five minutes or less per job regardless of the length of time it took to finish the job.

The reasonableness of this rule is that to receive on-the-job training, one must have skilled supervision at all times. If he is to learn from himself, he would not fit the description of an apprentice as defined in Webster's dictionary.

4 MCAR § 11.032 A & B

These are items that the Legislature has instruced the Board to establish by public hearing. All examination and renewal fees remain the same as they were when set up by the Legislature in 1967. This has been done to satisfy a Legislative mandate.

4 MCAR § 11.032 C

The need for apprentice registration is for the person as well as the Board. To qualify to take an exam for a given license, one must have on the job training verified by the employer. In many cases, the person trying to get their job training time verified by past employers, finds it almost impossible because of deaths, lost payroll records, etc.

It would eliminate the verification slips that show full time on-the-job training starting at the age of 8 years old.

The reasonableness of the regulation would be a starting time and the employer would be kept on the record by the Board for that person. When the person had completed the time required, the Board would have a record that would help in making the decision to allow the applicant to take the given test.

4 MCAR § 11.032 D.

The need for a reimbursment fee for revoked or suspended contractors licenses is that ample time is given the license holder by certified mail with return receipt that the license is in jeopardy of being revoked or suspended. This office writes about 200 notification letters each year that a statutory deficiency will occur. This notification letter gives at least 10 days notice to the license holder before action will be taken by the Board. About 1% do not pay any attention to the advance notice and have their license suspended or revoked. This consists of notifying all interested parties by certified mail that said license has been suspended or revoked. A few days later, the Board receives a letter from the contractor correcting the deficiency. The Board is then obligated to notify all parties that the license has been reinstated. Of this 1% over 90% are repeat cases by the same license holder year after year. They take no action until they receive the letter telling them that their license has been suspended or revoked. It is reasonable that this reinstatement cost should be paid by the offender because of their lack of interest and action when they do not pay any attention to the first notice sent by the Board.

C.B. Joriman
Executive Secretary

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE BOARD OF ELECTRICITY

In The Matter Of The Proposed Adoption Of Rules Of The State Board Governing The Minnesota Electrical Act

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RULES AS ADOPTED

4 MCAR § 11.030 requirements for securing an electrical contractors license. Definitions of responsibility of performance for Class "A" or Class "B" Master license holders who are employed by an electrical contractor to satisfy Minn. Stat. § 326.242, Subd. 6.

A. Each contractor shall designate the responsible electrician employed by him on his application for an electrical contractor's license. The Board shall not grant a new contractor's license if it appears that the responsible electrician so designated is also employed in the same capacity by any other electrical contractor. In the event that more than one previously licensed electrical contractor has designated the same responsible electrician on his application for a license renewal, the Board shall return the application to the contractors who shall have 15 days to resubmit their applications. If upon resubmission of the license application, it still appears that the same responsible electrician has been designated by more than one contractor, the Board ~~shall~~ may institute proceedings pursuant to Minn. Stat. § 326.242, Subd. 9 of this section, for non-renewal of the ~~applications~~ licenses of

each contractor by whom the same responsible electrician is employed.

B. In addition to all other requirements of Minn. Stat. § 326.242, Subd. 6 the applicant for an electrical contractor's license shall supply the following information where required by law, before a contractor's license is issued:

1. Employer's Social Security account number
2. Workers compensation insurance account number
3. Unemployment insurance account number
4. State withholding tax account number
5. Federal withholding tax account number
6. The name and address of:
   a) Each Partner or Venturer, if the applicant is a partnership or joint venture.
   b) The Owner, of the applicant is an individual proprietorship.
   c) The corporate officers if the applicant is a corporation.

4 MCAR § 11.031 definitions of personal "on-the-job" supervision as applied to Minn. Stat. § 326.242, Subd. 5, Apprentices. Personal on-the-job supervision shall require that the unlicensed person will have a licensed person present on the job and providing supervision the entire working day.

4 MCAR § 11.032 Licenses, Examination and Renewal fees.

A. All licenses issued hereunder shall expire one year from the date of issuance.

B. The following fees shall be payable for examination, issuance and renewal:

1. For examination
   a) Class "A" Master - $35.00

b) Class "B" Master - $20.00

c) Class "A" Journeyman, Class "B" Journeyman, Installer or Special Electrician - $10.00

2. For issuance of original license and renewal

a) Class "A" Master - $35.00

b) Class "B" Master - $20.00

c) Class "A" Journeyman, Class "B" Journeyman, Installer or Special Electrician - $ 7.50

d) Electrical Contractor's licenses shall be renewed on September 1st of each year. Original and renewal fee - $10.00

C. Apprentice electrician registration. An apprentice electrician shall register with the State ~~Electrical~~ Board of Electricity on or before his ninetieth calendar day of employment. The annual registration fee shall be $5.00. ~~He shall not be allowed to work on installations without personal on the job supervision of a licensed electrician.~~

D. Any Electrical ~~Contractor's license that is reissued after being revoked or suspended for statutory deficiencies described in Elec. 26, Revocation, shall pay a reinstatement cost~~ Contractor who seeks reissuance of his or her license after it has been revoked or suspended pursuant to Minn. Reg. Elec. 26 shall submit a reissuance fee of $100.00 before the license is reinstated. ~~by the Board.~~

STATE OF MINNESOTA

COUNTY OF RAMSEY

STATE BOARD OF ELECTRICITY

In The Matter Of The Proposed Adoption Of Rules Of The State Board Governing The Minnesota Electrical Act

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RULES AS ADOPTED

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3. Unemployment insurance account number
4. State withholding tax account number
5. Federal withholding tax account number
6. The name and address of:
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   b) The Owner, of the applicant is an individual proprietorship.
   c) The corporate officers if the applicant is a corporation.

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