

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File #537

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 8-31-79 Temporary Rule _____

Resubmitted and Received 9-13

DUE DATE 9-20-79

a. Returned to Agency w/o filing w/Secy of State ~~9/13~~ 9/12
b. Approved 9-13 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
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 ✓
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change Found ~~[illegible]~~ failure to comply with subd 4
    (ii) Permission to Incorporate by Reference, where applicable N.A.
    Bd in finding #3 withdrawn [illegible]
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 N.A.

① incorrect cite 626.843 / (c) is qualif for instructor

(1½) didn't list all of statements e is std of conduct

② Sept. 4 memo ⊗ typo

③ Finding of failure to meet Sect. 4 by Chief HE

- Bd in Finding #3 withdrawn that rule
- Existing of ~~13.012~~ 13.012 in final rules function of renumbering

RULES AS ADOPTED

4 MCAR § 13.011 Scope and purpose.

A. Authority. The rules promulgated in this section are adopted pursuant to the express legislative mandate of Minn. Stat. § 626.843 subd. 1(e), Minn. Stat. § 626.845 subd. 1(i), Minn. Stat. ch. 214.

B. Scope. Nothing in these rules shall preclude or prevent any agency, political subdivision, civil service commission or other appointing authority from publishing and enforcing rules, policies or procedures which are more comprehensive than those minimum statewide standards set forth hereinafter. The responsibility for enforcing any rules, policies or procedures which are more comprehensive than the following minimum standards of conduct shall remain with the promulgating agency, political subdivision, commission or appointing authority.

C. Statement of purpose. The board believes that in order for the public to have complete confidence in the integrity and ability of law enforcement, it is paramount that peace officers demonstrate that they are capable of self-regulation. The board further believes that internal discipline is properly a function of the appointing agency and its political subdivision. These standards of conduct relate to licensure only and violations thereof do not enlarge on a peace officer's civil or criminal liability in any way.

4 MCAR § 13.012 Standards of conduct. Violations of the following standards of conduct by a licensed officer shall be grounds for revocation or non-renewal of license:

A. The conviction of a felony in this state or in any other state or federal jurisdiction or of any offense in any other state or federal jurisdiction which would have been a felony if committed in Minnesota.

B. The use of deadly force when not authorized by Minn. Stat. § 609.066.

C. To make a false material statement under oath to the board which the peace officer does not believe to be true.

D. To have made a false material statement to the board while obtaining or renewing a license.

E. Failure to comply with the board's continuing education requirements as set forth in 4 MCAR § 13.008.

F. Failure to pay the licensing fee as set forth in 4 MCAR § 13.007.

G. Violations of board rules as set forth in 4 MCAR § 13.001 - § 13.020.

4 MCAR § 13.013 Complaints: investigation and hearing. Complaints, investigations and hearings under rule § 13.012 shall be pursuant to Minn. Stat. § 214.10 and § 214.11.

APPROVED AS TO FORM AND LEGALITY
SEP. 13 1979
19
WARREN SPANNAUS, ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 13 1979
Joan Anderson Growe
Secretary of State

3:40 P.M.

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

Our File #537

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MARK SHIELDS
Executive Director
Minnesota Board of Peace Officers
Standards and Training

DATE: September 12, 1979

FROM : LEE E. SHEEHY
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT:

In the Matter of the Proposed Adoption of the Rules of the Minnesota Board of Peace Officers Standards and Training Governing Standards of Conduct for Peace Officers and Constables

The above-captioned rules have not been approved by this office for the below enumerated reasons. After agency consideration those reasons and appropriate action, if any, the rules may be resubmitted to this office. At that time, please make sure that the original of the Order Adopting and the Rules As Adopted which is necessary for filing with the Secretary of State accompanies the resubmitted documents.

The rules have not been approved for the following reasons:

1. 4 MCAR § 13.011 A contains an incorrect citation. The authority for the rules promulgated is Subdivision 1(e), not Subdivision 1(c) as it appears in the rule. Secondly, it appears from the record that other statutory authority serves as a basis for these rules including but not limited to, Minn. Stat. § 626.845, Subdivision 1(i) and, perhaps, Minnesota Statutes Chapter 214. If this is correct, references to those statutory sections should be contained in the "Authority" section of Section 13.011.

2. Because of the rules being returned to the agency for other reasons, the typographical error brought to my attention by Mr. William Carter, Standards Coordinator of the Agency, in a memorandum dated September 4, 1979 should be corrected.

3. It is this office's understanding that the provisions referred to in the Report of the Chief Hearing Examiner have been withdrawn as reflected in the agency's Finding of Fact; and the existing of a rule numbered 4 MCAR Section "13.012" results from a renumbering of a rule to which the Chief Hearing Examiner did not object. If this is an incorrect interpretation of the record before this office, please inform us immediately.

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

LES/bw
cc: Richard Hodsdon

PRINTED ON RECYCLED PAPER

ADMIN 1000

STATE OF [redacted]NESOTA

DEPARTMENT Commerce (POST)

Office Memorandum

TO : Lee Sheehy
Special Assistant Attorney General

DATE: September 4, 1979

FROM : William R. Carter, III WRC3
Standards Coordinator
Peace Officer Standards
and Training Board

SUBJECT:

Per our telephone conversation of September 4, 1979, Rules as Adopted 4 MCAR § 13.013 is corrected to read: Complaints, investigations and hearings under rule § 13.012 shall be pursuant to Minn. Stat. § 214.10 and § 214.11. Hopefully this minor correction will not cause you any difficulty.

If you should have any questions, please feel free to contact me.

WRC:jm

RECEIVED
SEP 06 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

AG. Copy — 1st Submitted

RULES AS ADOPTED

4 MCAR § 13.011 SCOPE AND PURPOSE.

A. Authority. The rules promulgated in this section are adopted pursuant to the express legislative mandate of Minn. Stat. § 626.843 subd. 1(c).

B. Scope. Nothing in these rules shall preclude or prevent any agency, political subdivision, civil service commission or other appointing authority from publishing and enforcing rules, policies or procedures which are more comprehensive than those minimum statewide standards set forth hereinafter. The responsibility for enforcing any rules, policies or procedures which are more comprehensive than the following minimum standards of conduct shall remain with the promulgating agency, political subdivision, commission or appointing authority.

C. Statement of purpose. The board believes that in order for the public to have complete confidence in the integrity and ability of law enforcement, it is paramount that peace officer demonstrate that they are capable of self-regulation. The board further believes that internal discipline is properly a function of the appointing agency and its political subdivision. These standards of conduct relate to licensure only and violations thereof do not enlarge on a peace officer's civil or criminal liability in any way.

4 MCAR § 13.012 STANDARDS OF CONDUCT

Violations of the following Standards of Conduct by a licensed peace officer shall be grounds for revocation or non-renewal of license:

A. The conviction of a felony in this state or in any other state or federal jurisdiction or of any offense in any other state or federal jurisdiction which would have been a felony if committed in Minnesota.

B. The use of deadly force when not authorized by Minn. Stat. § 609.066.

C. To make a false material statement under oath to the Board which the peace officer does not believe to be true.

D. To have made a false material statement to the Board while obtaining or renewing a license.

E. Failure to comply with the Board's continuing education requirements as set forth in 4 MCAR § 13.008.

F. Failure to pay the licensing fee as set forth in 4 MCAR § 13.001 - § 13.020.

G. Violations of Board Rules as set forth in 4 MCAR § 13.001 - § 13.020.

4 MCAR § 13.013 COMPLAINTS: INVESTIGATIONS AND HEARINGS.

Complaints, investigations and hearings under rule § 13.013 shall be pursuant to Minn. Stat. § 214.10 and § 214.11.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

July 2, 1979

RECEIVED
JUL 3 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Mr. Mark K. Shields
Executive Director
Minnesota Board of Peace Officer
Standards and Training
500 Metro Square Building
Saint Paul, Minnesota 55101

Re: In the Matter of the Proposed Adoption of the Rules of the Minnesota Board of Peace Officer Standards and Training Governing Standards of Conduct for Peace Officers and Constables.
Docket No. POST-79-001-NG.

Dear Mr. Shields:

Enclosed is the Report of the Chief Hearing Examiner and the original documents you submitted to me for review as enumerated in your letter of June 22, 1979.

Sincerely,

/s/ Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

DRH:sw
Encs.
cc: Mr. Lee Sheehy

OLD COUNCIL TREE
ONIONSKIN
25% COTTON FIBER

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA BOARD OF PEACE OFFICER
STANDARDS AND TRAINING

IN THE MATTER OF THE PROPOSED
ADOPTION OF THE RULES OF THE
MINNESOTA BOARD OF PEACE OFFICER
STANDARDS AND TRAINING GOVERNING
STANDARDS OF CONDUCT FOR PEACE
OFFICERS AND CONSTABLES.

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, the above-entitled matter came on for hearing before Natalie L. Gaull, a Hearing Examiner of the State Office of Hearing Examiners, on February 20, 1979; February 21, 1979; February 22, 1979; and March 1, 1979, in compliance with Minn. Stat. Sec. 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. Sec. 15.052, subd. 3, was issued to the Minnesota Board of Peace Officer Standards and Training (hereinafter "Board") on April 20, 1979; and

WHEREAS, the Board has now determined to adopt rules pursuant to Minn. Stat. Sec. 15.0412, subd. 4; and

WHEREAS, the Board has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. Sec. 15.052, subd. 4, and 9 MCAR Sec. 2.110; and

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

WHEREAS, the Chief Hearing Examiner finds that the Board has not met all requirements of Minn. Stat. Sec. 15.0412, subd. 4, in that the Board has failed to make an affirmative presentation of facts establishing the need for and reasonableness of adopted rule 4 MCAR Sec. 13.012, nor had it demonstrated that it has statutory authority to adopt this rule, thus failing to fulfill "any relevant substantive or procedural requirements imposed on the agency by law" as required by Minn. Stat. Sec. 15.0412, subd. 4.

NOW, THEREFORE, pursuant to the provisions of Minn. Stat. Sec. 15.052, subd. 4 and 9 MCAR Sec. 2.111, the agency shall either withdraw rule 4 MCAR Sec. 13.012 or reconvene the rule hearing. If it withdraws 4 MCAR Sec. 13.012, 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. Sec. 15.0412, subd. 4.

Dated this 2nd day of July, 1979.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE Natalie Gaull,
HEARING EXAMINER

In the matter of the Proposed Adoption of Rules of the Minnesota Board of Peace Officer Standards and Training Governing the Selection, Training and Licensing of Peace Officers and Constables

FINDINGS OF FACT

The above entitled matter came on for hearing before Natalie Gaull, hearing examiner of the State of Minnesota on the 20th day of February, 1979, in the Metropolitan Council hearing room, Third Floor, Metro Square Building, St. Paul, Minnesota 55101, at 9:30 a.m.; on the 21st day of February, 1979, in the Department of Commerce hearing room, Fifth Floor, Metro Square Building, St. Paul, Minnesota 55101, at 9:30 a.m.; on the 22nd day of February, 1979, in Room 217, Lecture Center Building, Southwest State University, Marshall, Minnesota at 7:00 p.m.; and on the 1st day of March, 1979, in the St. Louis County Board Room, Second Floor, Fifth Avenue West at First Street, Duluth, Minnesota 55802, at 1:30 p.m. and 7:00 p.m.; after proper notice required by M.S. 1978, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, filed and proceedings herein, the board finds the following:

1. That the facts set forth in the report of the hearing examiner, attached as Exhibit A, except for such provisions as expressed in the Board's response to the findings of the hearing examiner, are true and correct and adopted as is set forth fully herein.

2. That the facts set forth in the Board's response to the hearing examiner, attached as Exhibit B, and adopted by the Board on June 7, 1979, are true and correct and adopted as is fully set forth herein.

3. That on August 29, 1979, the Board withdrew what was then numbered Rule 4 MCAR 13.012, which had been entitled "Responsibilities of Individual Agencies". This action was in response to the Report of the Chief Hearing Examiner, attached hereto as Exhibit C.

4. 4 MCAR §§ 13.011 - 13.013 as amended.

STATE OF MINNESOTA
BOARD OF PEACE OFFICER
STANDARDS AND TRAINING

Mark K. Shields
EXECUTIVE DIRECTOR

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

April 23, 1979

Mr. Mark Shields
Executive Director
Minnesota Board of Peace
Officer Standards and Training
500 Metro Square Building
Saint Paul, Minnesota 55101

Re: In the Matter of the Proposed Adoption of the Rules of the Minnesota Board of Peace Officer Standards and Training Governing Standards of Conduct for Peace Officers and Constables. Docket No. POST-79-001-NG.

Dear Mr. Shields:

Enclosed please find the official record in the above-entitled matter, including the original copy of the Report of the Hearing Examiner. Also included are Tapes No. 998, 1135, 307, 126, 259, 631 and 1147 of the proceedings.

You will note that Exhibit No. 14 is not included. I am unsure whether it is actually missing or may have been skipped in the numbering of the exhibits.

Sincerely,

Natalie L. Gaull

NATALIE L. GAULL
State Hearing Examiner

Telephone: 296-8114

NLG:sw
Encs.

Exhibit A

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

POST-79-001-NG

NATALIE L. GAULL, being first duly sworn, hereby deposes and says:

That at the City of Saint Paul, county and state aforementioned, on the 20th day of April, 1979, she did serve the Report of Hearing Examiner

upon The Minnesota Board of Peace Officer Standards and Training

by personally handing to Mr. Dale Dysinger,

said copy of the Report.

Natalie L. Gaull

Subscribed and sworn to before me this 20th day of April, 1979.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA BOARD OF PEACE OFFICER
STANDARDS AND TRAINING

In the Matter of the Proposed
Adoption of the Rules of the
Minnesota Board of Peace Officer
Standards and Training Governing
Standards of Conduct for Peace
Officers and Constables.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Natalie L. Gaull, duly appointed as Hearing Examiner, on the following dates and locations: February 20, 1979, in the Metropolitan Council hearing room, Third Floor, Metro Square Building, Saint Paul, Minnesota 55101, at 9:30 a.m.; February 21, 1979, in the Department of Commerce hearing room, Fifth Floor, Metro Square Building, Saint Paul, Minnesota 55101, at 9:30 a.m.; February 22, 1979, in Room 217, Lecture Center Building, Southwest State University, Marshall, Minnesota, at 7:00 p.m.; and March 1, 1979, in the St. Louis County Board Room, Second Floor, Fifth Avenue West at First Street, Duluth, Minnesota 55802, at 1:30 p.m. and 7:00 p.m.

This proceeding is a rules hearing held pursuant to Minn. Stat. Chapter 15, to determine whether the proposed rules should be adopted. Copies of this Report are available for review from the Board of Peace Officer Standards and Training (hereinafter "the Board") and from the Office of Hearing Examiners.

Members of the agency panel included: Richard Hodsdon, Special Assistant Attorney General; Mark Shields, Executive Director of the Board; William Effertz; Paul Tschida; Tom Tolman; Dale Dysinger; Richard Setter; Gerald Bridgeman; Dean O'Borsky; and Ann Darby. A total of sixty-four (64) persons were present at the hearings and signed the register. Approximately sixteen (16) persons spoke at the hearings. Approximately fifteen (15) timely written comments were received by the Examiner subsequent to the issuance of the Order for Hearing and prior to the close of the record on March 20, 1979.

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

FINDINGS OF FACT

Procedural Requirements

1. On January 16, 1979, the Board filed the following documents with the Chief Hearing Examiner:

(a) The Order for Hearing;
(b) The Notice of Hearing; and
(c) A copy of the proposed rules.

2. On January 17, 1979, the Board filed an Amended Notice of Hearing.

3. On January 26, 1979, the Board filed the following documents with the Hearing Examiner:

(a) The Affidavit of Receipt of the Secretary of State's list;
(b) The Certificate of Delivery of the Secretary of State's list;
(c) The Affidavit of Mailing to persons on the Secretary of State's list;
(d) The Affidavit of Additional Mailing;
(e) The Notice of Intent to Solicit Outside Opinion concerning the proposed rules; and
(f) A copy of the Statement of Need and Reasonableness.

4. On February 16, 1979, the Board filed a memorandum which listed the names of persons to whom copies of the proposed rules had been sent.

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

6. On January 15, 1979, the Notice of Hearing and a copy of the proposed rules were published at 3 State Register 1412.

7. On January 15, 1979, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State.

8. On January 19, 1979, the Board mailed the Amended Notice of Hearing to additional persons and associations who had registered their names with the Secretary of State.

9. The record remained open through March 21, 1979, for the receipt of written comments and statements.

Statutory Authority

10. The Board cites Minn. Stat. Sec. 626.843, subd. 1(e) and Sec. 626.845, subd. 1(i) as authority for the proposed rules.

Minn. Stat. Sec. 626.843, subd. 1(e) directs the Board to adopt rules with respect to:

> . . .
>
> (e) Minimum standards of conduct which would affect the performance of the individual in his duties as a peace officer;
>
> These standards shall be established and published on or before July 1, 1979.
>
> . . .

Minn. Stat. Sec. 626.845, subd. 1(i) authorizes the Board:

> (i) To perform such other acts as may be necessary and appropriate to carry out the powers and duties as set forth in the provisions of sections 626.841 to 626.855;
>
> . . .

Questions have been raised regarding the Board's authority to revoke licenses and to delegate authority to local police departments. These issues are discussed in paragraphs 14 and 15 of the Findings herein. The

Examiner finds that the Board derives sufficient authority from Minn. Stat. Sec. 626.843, subd. 1(e) and Sec. 626.845, subd. 1(i) to promulgate the proposed rules, except as noted at paragraph 14 of the Findings herein.

Substantive Discussion

11. 4 MCAR Sec. 13.011 is entitled Standards of Conduct and includes subsections entitled Scope, Statement of Purpose, and Responsibilities of Individual Agencies. The Examiner notes that 4 MCAR Sec. 13.012 is entitled Standards and includes standards of conduct as well as procedures for investigation and hearing of complaints. The Examiner notes that the similarity of titles is confusing and that neither title accurately reflects the contents of the rule which follows. The Examiner suggests that the rules be amended as follows:

a. The title of 4 MCAR Sec. 13.011 should be changed to Scope and Purpose.

b. 4 MCAR Sec. 13.011 C. should be changed to a separate rule entitled Responsibilities of Individual Agencies.

c. The title of 4 MCAR Sec. 13.012 should be changed to Standards of Conduct.

d. 4 MCAR Sec. 13.012 B. should be changed to a separate rule entitled Complaints: Investigations and Hearings.

It should be noted that these suggestions are technical in nature, and are separate from and subordinate to any substantive Findings which follow.

12. 4 MCAR Sec. 13.011 A. deals with the scope of the rules. It indicates that the rules are promulgated pursuant to the legislative mandate contained in Minn. Stat. Sec. 626.843, subd. 1(e). It also provides that the local agencies may adopt standards which are more comprehensive than those contained in the rules and that the local agencies are responsible for enforcement of any standards which are more comprehensive. The Examiner finds that this section of the rule is necessary and reasonable in order to clarify that the statewide minimum standards are not intended to pre-empt the area of standards of conduct and that local agencies are responsible for enforcing local standards. There was some comment that the Board is supposed to adopt standards of conduct which would supercede any local regulation. However, that is not clear from Minn. Stat. Sec. 626.843, subd. 1(e). The Examiner notes that the first sentence of section A. would be more logically placed as a separate section entitled "Authority".

13. 4 MCAR Sec. 13.011 B. is entitled Statement of Purpose and sets out the philosophical bases underlying the method chosen by the Board to carry out its legislative mandate. The Examiner finds that this section as proposed is reasonable and necessary to ensure that those persons reading the rule have a common understanding of basis upon which the Board has acted.

14. 4 MCAR Sec. 13.011 C. requires agencies to establish comprehensive written rules or policies for the administration of internal discipline and to include procedures for filing and investigation of complaints

against peace officers. It also requires the agencies to provide written copies of the rules and policies to all peace officers and to file an annual statement of compliance indicating that they have established such rules and policies. The rule, if adopted, should be amended so that it is clear that agency means local appointing agency.

The Examiner has reviewed Minn. Stat. Sec. 626.84 - Sec. 626.855 and has concluded that the Board lacks the authority to require local appointing agencies to establish comprehensive written rules or policies for the administration of internal discipline. At paragraph 15 of the Findings, the Examiner has discussed the issue of whether the Board must adopt comprehensive standards of conduct. Although the Examiner concludes that the Board need not exercise the full range of its authority in adopting standards, it is not clear that the Board can require local agencies to go beyond the extent of regulation that the Board has selected. The only possible authority for this provision would be Minn. Stat. Sec. 626.845, subd. 1(i). However, the Examiner suggests that a more specific grant of authority is necessary for the Board to place this type of requirement on local authorities.

Even if it is assumed arguendo that the Board can require local authorities to adopt comprehensive written rules for the administration of internal discipline, it is clear that the rule must contain sufficient standards to guide the local authorities' exercise of that authority. The only requirement contained in the proposed rule is that rules must include procedures for filing and investigation of citizen complaints. Also, this section is not necessary to carry out the statutory mandate contained in Minn. Stat. Sec. 626.843, subd. 1(e).

The Examiner finds that the Board lacks statutory authority to require local agencies to comply with this rule, and has failed to demonstrate by an affirmative presentation of facts that this section of the proposed rule is reasonable and necessary.

15. 4 MCAR Sec. 13.012 A. sets forth the standards of conduct which, if violated, shall be grounds for revocation or non-renewal of a license. There was substantial written and oral comment dealing with the proposed standards of conduct as a whole, as well as comment on specific individual standards. Representative Donald Moe criticized the rules because (1) the Board did not fulfill its statutory requirement to establish statewide standards of conduct; (2) the Board lacks authority to place the responsibility for establishing police standards on local units of government; and (3) the rules are unreasonably limited in scope. Matthew Stark of the Minnesota Civil Liberties Union also criticized the rules for not being sufficiently comprehensive or sufficiently directed to specific police activities. Similar comments were received from Norbert Gernges, Director of Portland House; Earl Craig, Urban Coalition of Minneapolis; Common Cause; Joanna Buzek, chairperson of the League of Women Voters Minneapolis' Police Study Committee; and Joseph Rukavina, among others.

In reviewing this portion of the rules, the Examiner is faced with two inquiries. Is there statutory authority to adopt the proposed rules? Are the rules, as proposed, necessary and reasonable? It must be emphasized that the Department is not required to adopt the most reasonable rule, it is only required to make an affirmative presentation of facts showing that the rule is reasonable. It is clear that the proposed rule is necessary in order to carry out the legislative mandate. The rule is reasonable if it is not arbitrary and capricious.

Although there is a general consensus as to the meaning of "necessary" as "required" or "needed", the Examiner believes it is appropriate to define the standard of "reasonable" applied in this proceeding.

"Reasonable" is the opposite of arbitrary and capricious. An arbitrary and capricious standard can be defined as follows:

> That standard (arbitrary and capricious) is a narrow one, to be applied only where administrative action "is not supportable on any rational basis" or where it is "willful and unreasoning action, without consideration and in disregard of the facts or circumstances of the case".

Greenhill v. Bailey, 519 F.2d 5, 10 (8th Cir. 1975). Reasonableness, then, means to have a rational basis for the action.

In setting forth the findings that establish the rational basis for adoption of this rule, the Department's presentation is not limited to only adjudicatory facts. Rulemaking is a legislative function; it is not an adjudicatory function like a contested case. There is a difference between the kind of facts relied on in a rulemaking hearing and the kind of facts relied on in an adjudication. Professor Kenneth Culp Davis identifies this difference:

> Two main elements in rulemaking are (1) facts, and (2) ideas about policies. The two are generally interwoven in such a degree that in some parts of the whole problem of what to do, they are inseparable. Even so, a main element in rulemaking is necessarily the policy choice that the administrator must make. Adoption of a rule may require some understanding of facts, but it always requires legislating. Courts must leave administrators free to legislate, within the limits of rationality. And legislating inevitably involves the addition of something to the facts in the rulemaking record.

K. Davis, Administrative Law of the Seventies, (Cumulative Supp. 1977) (emphasis in original).

The Minnesota Supreme Court has recognized the difference between legislative facts and adjudicatory facts and has identified the support needed to uphold the two kinds of facts. In St. Paul Area Chamber of Commerce v. Minnesota Public Service Comm'n., 251 N.W.2d 350 (Minn. 1977), the Court said:

> . . . (H)owever, rate allocation is not a judicial or quasi-judicial function. Once revenue requirements have been determined it remains to decide how, and from whom, the additional revenue is to be obtained. It is at this point that many countervailing considerations come into play. The commission may then balance factors such as cost of service, ability to pay, tax consequences, and

> ability to pass on increases in order to achieve a fair and reasonable allocation of the increase among consumer classes. . . .It is clear that when the commission acts in this area it is operating in a legislative capacity, as the above cases have stated. The careful balancing of public courts, unless statutory authority has been exceeded or discretion abused. . . .In ascertaining whether or not the statute has been contravened, the district court must give wide latitude to the commission in allowing it to consider many factors which might not ordinarily be considered by a court, as we have explained above. This is so because, while the court is qualified to review agency findings when an agency acts in a quasi-judicial manner in factual matters, it is not so qualified to review legislative judgments when social policies must be weighed in the balance.

Id. at 356-357.

In this rulemaking proceeding, many of the facts are legislative facts--policy decisions and judgments. The inclusion of certain components in the proposed formula is based upon Department policies regarding the goals of Title XX reimbursement. The components included in other formulae proposed by the counties are based on different policies. There is no right answer--there are only reasonable answers.

In another Public Service Commission ratemaking case, Northwestern Bell Telephone Co. v. State, 253 N.W.2d 815 (Minn. 1977), the Minnesota Supreme Court distinguished the two kinds of facts involved in exercising a legislative function. There, the Court said:

> In determining the extent of the allowable adjustment, it appears that the PSC was acting in both a judicial and a legislative capacity. In finding as a fact the amount of the 1974 impact of the contract, the PSC's decision was amply supported by the evidence. In deciding to limit the adjustment to a one-year period, the PSC determined as a matter of public policy that changes occurring more than one year beyond the test year would best be considered in proceedings taking into account all of the facts necessary to accurately set Bell's rates. This determination cannot be said to be arbitrary or unjust. . . .

Id. at 822. See also, Northwestern Bell Telephone Co. v. State, 299 Minn. 1, 216 N.W.2d 841 (1974), and Reserve Mining Co. v. Herbst, 256 N.W.2d 808 (Minn. 1977).

Although the federal rulemaking process differs from that of Minnesota, it would be helpful to examine two federal cases. An example of a federal agency acting on legislative facts is Mourning v. Family Publications Service, Inc., 411 U.S. 356 (1973), where the U.S. Supreme Court upheld regulations of the Federal Reserve Board governing credit transactions of more than four installments. Professor Davis' discussion of the Mourning case is helpful:

> (T)he Supreme Court had no power to change "four" to three or five, because Congress had delegated that power to the Board and the Board had made its determination. On the question of what the number should be, the Court could do no more than determine whether "four" was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

K. Davis, Administrative Law of the Seventies, 206 (Cumulative Supp. 1977).

The Examiner, using the preceding standard of reasonableness in evaluating these rules, has determined that the Board may choose to adopt standards of conduct relating solely to revocation or non-renewal of a peace officer's license. Minn. Stat. Sec. 626.843, subd. 1(e) mandates the adoption of rules regarding minimum standards of conduct. This permits the Board to regulate a wide range of conduct if it so chooses. However, the statute, on its face, does not require the Board to adopt comprehensive rules covering standards of conduct. Representative Moe argues that the legislative intent was that the standards should be comprehensive. Minn. Stat. Sec. 645.16, which deals with legislative intent and construction of statutes provides, in relevant part, as follows:

> . . .When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.
>
> When the words of a law are not explicit, the intention of the legislature may be ascertained by considering. . . .

Since Minn. Stat. Sec. 626.843, subd. 1(e) clearly and unambiguously requires minimum standards, the Examiner finds that the question of legislative intent is not relevant. The Examiner also finds that the Board may choose to adopt rules dealing with standards of conduct that relate solely to revocation or non-renewal of peace officers' licenses. The Board has articulated its reasons for that policy at the hearing and in its Statement of Need and Reasonableness. The Examiner finds that the Board has documented the reasonableness and necessity of that decision.

The Minneapolis Police Officers Federation, by its attorney, submitted a memorandum of law arguing that the Board does not have the authority to revoke the license of a police officer. It is true that Minn. Stat. Sec. 626.841 - Sec. 626.855 do not expressly permit the Board to revoke or not renew peace officers' licenses. However, Minn. Stat. Sec. 626.845 does permit the Board to license peace officers and to perform such other acts as may be necessary and appropriate to carry out the powers and duties set forth in the provisions of Sections 626.841 to 626.855. Furthermore, Minn. Stat. Sec. 214.07, subd. 1(n) requires the Board to report the numbers of persons previously licensed whose licenses were revoked, suspended or otherwise altered in status. Minn. Stat. Sec. 214.11, subd. 2(a) specifically directs initiation of revocation, non-renewal or suspension proceedings against the license of a person convicted of violating Minn. Stat. Sec. 609.23, Sec. 609.231, Sec. 609.465, Sec. 609.466, Sec. 609.52 or Sec. 626.555. Also, 4 MCAR Sec. 13.006 B., which has the full force and effect of law, refers to revocation or suspension of licenses. Therefore, the Examiner concludes that the Board does have the authority to revoke or not renew a peace officer's license.

The Examiner notes that the language of 4 MCAR Sec. 13.012 A. is confusing because the sections which follow it do not set out standards of conduct which, if violated, shall be grounds for revocation or non-renewal

of a license. Those sections set out acts which shall be grounds for revocation or non-renewal of a license. The Examiner suggests that the language should be amended to more accurately reflect the contents of the rule.

16. 4 MCAR Sec. 13.012 A.1. basically provides that the commission of a felony may be the basis of license revocation or non-renewal. This provision was the subject of extensive oral and written comment which indicated that "commission" should be changed to "conviction". The Board's position, as set out in the Statement of Need and Reasonableness, is that discipline for commission of a felony (1) would act as a deterrent; (2) would increase public confidence; and (3) would give the Board an opportunity to make an independent judgment without being under the control of the criminal justice system. Most persons who criticized this provision felt that it was unfair to put peace officers through an additional trial-type proceeding and that the Board did not have the right and/or authority to make an independent determination regarding criminal acts which could lead to loss of an occupational license.

There was some comment that the language "commission of a felony" was confusing. Therefore, the Board is considering changing the language to "commission of an act defined as felony". There were other comments that this provision was duplicative of certain Civil Service or local administrative disciplinary proceedings. The Board comments that it is the only body which can issue or revoke licenses, these would be the only proceedings directed to that end.

Some question was also raised regarding the issues of double jeopardy and collateral estoppel, asserting that the Board may be in violation of the constitutional rights of an officer if it revokes or fails to renew a license because an officer has committed a felony. The Board prepared a legal memorandum at he request of the Examiner. The Board points out that the constitutional prohibition against double jeopardy applies only to successive criminal prosecutions by the same sovereign. The doctrine does not prevent both a criminal sanction and a civil or administrative sanction from being imposed for the same conduct. It also is the position of the Board that the doctrines of res judicata and collateral estoppel would not prevent the imposition of licensure sanctions if a licensee has been acquitted of criminal charges. The doctrines of collateral estoppel and res judicata require that the parties be the same before they may be invoked. Since the Board would not be a party to a criminal action, it would not be bound by the outcome of such criminal case. In addition to numerous other cases, the Board cites State v. House, 219 Minn. 424, 192 N.W.2d 93 (1971), in support of its contention. There, the Minnesota Supreme Court held that the plaintiff in the criminal case was not the same plaintiff as in the license revocation proceedings. Thus, the state in revoking a license is bound neither by any agreement struck in the criminal case nor by the doctrine of estoppel.

The near unanimity of opinion against this section is virtually unprecedented in this Examiner's experience. Other licensing statutes

specifically require conviction of a felony as a basis for license revocation, suspension or non-renewal. See, Minn. Stat. Sec. 326.11, Sec. 326.23, Sec. 326.331, and Sec. 386.70. The Board has given cogent reasons why it believes it is necessary and reasonable to use "commission" rather than "conviction" in this rule. However, the Examiner finds that the Board has not demonstrated by an affirmative presentation of fact that this section of the rule is reasonable and necessary. The Board may have been operating with good intentions in attempting to hold its licensees to the highest standards of conduct. Nevertheless, the Board's attempt to substitute its judgment for that of the criminal justice system in this section of the rule reflects the Board's distrust of that system. In order to demonstrate that it is reasonable for the Board to make an independent judgment whether a felony has been committed, the Board would have to demonstrate some public interest of overriding importance. It has not done so. Furthermore, the Examiner finds that this section as proposed is not necessary to carry out the legislative mandate to establish minimum standards of conduct. A rule providing for revocation or non-renewal of licensure upon conviction of a felony would also carry out the statutory mandate without jeopardizing the fundamental rights of the licensee.

17. 4 MCAR Sec. 13.012 A.2. provides that the use of deadly force when not authorized by Minn. Stat. Sec. 609.066 shall be grounds for revocation or non-renewal of licensure. The Board states that the purpose of this standard is to ensure that peace officers are held to a high standard of care and conduct with regard to the use of deadly force. Comment with regard to this section indicated concern that the rules should establish exactly when a peace officer may use deadly force. The Board notes that Minn. Stat. Sec. 609.066 does exactly that. Peace officers indicated concern that a rule providing for disciplinary action in the event of improper use of excessive force was not reasonable. The Board indicates that this standard reflects existing state law and, as such, is reasonable. There was also concern regarding the procedural mechanics of determining whether the use of deadly force was reasonable. As noted by the Board, such a determination would be made pursuant to Minn. Stat. Ch. 214 and Minn. Stat. Ch. 15, in a contested case proceeding conducted by the Office of Hearing Examiners. It is the position of the Board that this would guarantee that fair procedures were used. The Examiner finds that this section of the rule, as proposed, is necessary and reasonable.

18. 4 MCAR Sec. 13.012 A.3. prohibits the making of false material statements under oath to the Board which the peace officer does not believe to be true. The Board indicates that it must be able to obtain honest answers and factually correct information in the regulation of the conduct and activities of peace officers. There was no comment with regard to this rule. The Examiner finds that it is necessary and reasonable.

19. 4 MCAR Sec. 13.012 A.4. - A.7. deal with violations of various licensing provisions as set forth in 4 MCAR Sec. 13.001 - 13.020. There was

no comment at the hearing with regard to those rules. The Examiner adopts the Statement of Need and Reasonableness with regard thereto and finds that these sections, as proposed, are necessary and reasonable.

20. 4 MCAR Sec. 13.012 B. provides that investigation and hearing of complaints under the rule shall be conducted pursuant to Minn. Stat. Sec. 214.10 and Sec. 214.11: The Minnesota Police Chiefs Association offered testimony questioning the feasiblity of placing the investigation and hearing process under Minn. Stat. Ch. 214. The Board indicated at the hearing that there were some potential conflicts between the provisions of Chapter 214 and the proposed rules which were being addressed to the Legislature during the current session. However, at this time the provisions of statute require that investigation and discipline be carried out under that chapter. The Examiner finds that this portion of the rule, as proposed, is necessary and reasonable.

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

CONCLUSIONS

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

2. That the Board has statutory authority to take the action proposed, to wit: the promulgation of the proposed rules with the exceptions noted herein.

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

4. That except as otherwise noted the Board has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record.

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

RECOMMENDATION

It is recommended that the Peace Officer Standards and Training Board not adopt 4 MCAR Sec. 13.011 C. and 4 MCAR Sec. 13.012 A.1.; and

It is further recommended that the remainder fo the rules be adopted by the Board with consideration given to the Findings of Fact herein.

Dated: April 20, 1979.

NATALIE L. GAULL
State 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 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.

REVISION OF RULES AND COMMENTS ON

THE HEARING EXAMINER'S FINDING OF FACT

I. The following revisions are the organizational changes suggested by the Hearing Examiner.

Rules as Proposed	Rules as Adopted
4 MCAR § 13.011	The title of this section is changed to "Scope and Purpose".
4 MCAR § 13.011 A.	The title "Scope" is replaced with "Authority".
4 MCAR § 13.011 A.	4 MCAR § 13.011 B. will now begin with: "Scope. Nothing in these rules shall preclude . . . commission or appointing authority."
4 MCAR § 13.011 B.	This section will now become 4 MCAR § 13.011 C. This is done to maintain proper outline form.
4 MCAR § 13.011 C.	This is now changed to 4 MCAR § 13.012 "Responsibilities of Individual Agencies."
4 MCAR § 13.011 C.1.	In order to maintain proper form, this will now be 4 MCAR § 13.012 A.
4 MCAR § 13.011 C.2.	This is now classified 4 MCAR § 13.012 B. Reference to § 13.011 and § 13.011 C. is changed to § 13.012.
4 MCAR § 13.011 C.3.	This is now labeled 4 MCAR § 13.012 C. Reference to § 13.011 C. is changed to § 13.012.
4 MCAR § 13.012	As recommended by the Hearing Examiner, this will now be 4 MCAR § 13.013 "Standards of Conduct."
4 MCAR § 13.012 A.	"A." will be deleted and the remaining paragraph will directly follow the title "Standards of Conduct."
4 MCAR § 13.012 A.1.-7.	This section will now become 4 MCAR § 13.012 and the "A.-G." will replace "1.-7." respectively.
4 MCAR § 13.012 B.	As suggested, this section becomes a separate section: 4 MCAR § 13.014 "Complaints: Investigations and Hearings." Also, the reference

II. The following are other recommended revisions suggested by the Hearing Examiner.

Rules as Proposed	Comments
4 MCAR § 13.011 C.	On page 3, paragraph 14 of the Hearing Examiner's report it is suggested that the term "agency" be changed to "local appointing agency". 4 MCAR 13.002 A.1. already defines agency as "local or state law enforcement agency employing peace officers". To avoid any duplication of definitions and any misinterpretations, "agency" should remain.
4 MCAR § 13.011 C.	The Hearing Examiner stated, "A more specific grant of authority is necessary for the board to place such a requirement on local authorities." Senate File 1376, Chapter 117 was recently made law (copy attached). The investigation process under this legislation and Minn. Stat. § 214.10 requires local agencies to review and investigate complaints against peace officers. The new law gives the necessary authority to this rule. So that requirements of this rule can be easily met by all agencies, the Board will create a prototype complaint system that will be available to any agency on request. Examples of this system were submitted with the agency's response to the comments that were made during the public hearing process. Copies of these example systems are attached.
4 MCAR § 13.011 C.	The investigation process and release of information relating to complaints against peace officers are covered by two new pieces of legislation, Senate File 1376, Chapter 117, and House File 738, Chpater 328 (copies attached). Both laws indicate that the conclusion of an investigation will be called "the final disposition". In addition, House File 738, Chapter 328 clearly explains what information is public during and after the investigation of a complaint. Because of this legislation, the Board has deleted the word "findings" and replaced it with "final disposition". This change was done to ensure that the language of this rule parallels that of the statutes.

4 MCAR § 13.012	The Hearing Examiner noted that the language contained in this section could be amended to "accurately reflect the contents of the rule". Because the Board feels that the present language is familiar to peace officers, they see no need to change the wording of these standards.
4 MCAR § 13.012 A.1.	The Board accepts the Hearing Examiner's recommendation to change the word "commission" to "conviction".

CERTIFICATE OF BOARD'S AUTHORIZING RESOLUTION

I, RICHARD SETTER, do hereby certify that I am the Chairman of the Board of Peace Officers Standards and Training, 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 Peace Officers Standards and Training duly and properly called and held on the 19th day of December, 1978, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that MARK SHIELDS, Executive Director of the Board of Peace Officers Standards and Training, is hereby granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board of Peace Officers Standards and Training relating to standards of conduct 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 29th day of August, 1979.

Richard M Setter

RICHARD SETTER, Chairman

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

April 23, 1979

Mr. Mark Shields
Executive Director
Minnesota Board of Peace
Officer Standards and Training
500 Metro Square Building
Saint Paul, Minnesota 55101

Re: In the Matter of the Proposed Adoption of the Rules of the Minnesota Board of Peace Officer Standards and Training Governing Standards of Conduct for Peace Officers and Constables. Docket No. POST-79-001-NG.

Dear Mr. Shields:

Enclosed please find the official record in the above-entitled matter, including the original copy of the Report of the Hearing Examiner. Also included are Tapes No. 998, 1135, 307, 126, 259, 631 and 1147 of the proceedings.

You will note that Exhibit No. 14 is not included. I am unsure whether it is actually missing or may have been skipped in the numbering of the exhibits.

Sincerely,

NATALIE L. GAULL
State Hearing Examiner

Telephone: 296-8114

NLG:sw
Encs.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

POST-79-001-NG

NATALIE L. GAULL, being first duly sworn, hereby deposes and says:

That at the City of Saint Paul, county and state aforementioned, on the 20th day of April, 1979, she did serve the Report of Hearing Examiner

upon The Minnesota Board of Peace Officer Standards and Training

by personally handing to Mr. Dale Dysinger,

said copy of the Report.

Natalie L. Gaull

Subscribed and sworn to before me this 20th day of April, 1979.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA BOARD OF PEACE OFFICER
STANDARDS AND TRAINING

In the Matter of the Proposed
Adoption of the Rules of the
Minnesota Board of Peace Officer
Standards and Training Governing
Standards of Conduct for Peace
Officers and Constables.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Natalie L. Gaull, duly appointed as Hearing Examiner, on the following dates and locations: February 20, 1979, in the Metropolitan Council hearing room, Third Floor, Metro Square Building, Saint Paul, Minnesota 55101, at 9:30 a.m.; February 21, 1979, in the Department of Commerce hearing room, Fifth Floor, Metro Square Building, Saint Paul, Minnesota 55101, at 9:30 a.m.; February 22, 1979, in Room 217, Lecture Center Building, Southwest State University, Marshall, Minnesota, at 7:00 p.m.; and March 1, 1979, in the St. Louis County Board Room, Second Floor, Fifth Avenue West at First Street, Duluth, Minnesota 55802, at 1:30 p.m. and 7:00 p.m.

This proceeding is a rules hearing held pursuant to Minn. Stat. Chapter 15, to determine whether the proposed rules should be adopted. Copies of this Report are available for review from the Board of Peace Officer Standards and Training (hereinafter "the Board") and from the Office of Hearing Examiners.

Members of the agency panel included: Richard Hodsdon, Special Assistant Attorney General; Mark Shields, Executive Director of the Board; William Effertz; Paul Tschida; Tom Tolman; Dale Dysinger; Richard Setter; Gerald Bridgeman; Dean O'Borsky; and Ann Darby. A total of sixty-four (64) persons were present at the hearings and signed the register. Approximately sixteen (16) persons spoke at the hearings. Approximately fifteen (15) timely written comments were received by the Examiner subsequent to the issuance of the Order for Hearing and prior to the close of the record on March 20, 1979.

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

FINDINGS OF FACT

Procedural Requirements

1. On January 16, 1979, the Board filed the following documents with the Chief Hearing Examiner:

(a) The Order for Hearing;
(b) The Notice of Hearing; and
(c) A copy of the proposed rules.

2. On January 17, 1979, the Board filed an Amended Notice of Hearing.

3. On January 26, 1979, the Board filed the following documents with the Hearing Examiner:

(a) The Affidavit of Receipt of the Secretary of State's list;
(b) The Certificate of Delivery of the Secretary of State's list;
(c) The Affidavit of Mailing to persons on the Secretary of State's list;
(d) The Affidavit of Additional Mailing;
(e) The Notice of Intent to Solicit Outside Opinion concerning the proposed rules; and
(f) A copy of the Statement of Need and Reasonableness.

4. On February 16, 1979, the Board filed a memorandum which listed the names of persons to whom copies of the proposed rules had been sent.

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

6. On January 15, 1979, the Notice of Hearing and a copy of the proposed rules were published at 3 State Register 1412.

7. On January 15, 1979, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State.

8. On January 19, 1979, the Board mailed the Amended Notice of Hearing to additional persons and associations who had registered their names with the Secretary of State.

9. The record remained open through March 21, 1979, for the receipt of written comments and statements.

Statutory Authority

10. The Board cites Minn. Stat. Sec. 626.843, subd. 1(e) and Sec. 626.845, subd. 1(i) as authority for the proposed rules.

Minn. Stat. Sec. 626.843, subd. 1(e) directs the Board to adopt rules with respect to:

> . . .
>
> (e) Minimum standards of conduct which would affect the performance of the individual in his duties as a peace officer;
>
> These standards shall be established and published on or before July 1, 1979.
>
> . . .

Minn. Stat. Sec. 626.845, subd. 1(i) authorizes the Board:

> (i) To perform such other acts as may be necessary and appropriate to carry out the powers and duties as set forth in the provisions of sections 626.841 to 626.855;
>
> . . .

Questions have been raised regarding the Board's authority to revoke licenses and to delegate authority to local police departments. These issues are discussed in paragraphs 14 and 15 of the Findings herein. The

Examiner finds that the Board derives sufficient authority from Minn. Stat. Sec. 626.843, subd. 1(e) and Sec. 626.845, subd. 1(i) to promulgate the proposed rules, except as noted at paragraph 14 of the Findings herein.

Substantive Discussion

11. 4 MCAR Sec. 13.011 is entitled Standards of Conduct and includes subsections entitled Scope, Statement of Purpose, and Responsibilities of Individual Agencies. The Examiner notes that 4 MCAR Sec. 13.012 is entitled Standards and includes standards of conduct as well as procedures for investigation and hearing of complaints. The Examiner notes that the similarity of titles is confusing and that neither title accurately reflects the contents of the rule which follows. The Examiner suggests that the rules be amended as follows:

a. The title of 4 MCAR Sec. 13.011 should be changed to Scope and Purpose.

b. 4 MCAR Sec. 13.011 C. should be changed to a separate rule entitled Responsibilities of Individual Agencies.

c. The title of 4 MCAR Sec. 13.012 should be changed to Standards of Conduct.

d. 4 MCAR Sec. 13.012 B. should be changed to a separate rule entitled Complaints: Investigations and Hearings.

It should be noted that these suggestions are technical in nature, and are separate from and subordinate to any substantive Findings which follow.

12. 4 MCAR Sec. 13.011 A. deals with the scope of the rules. It indicates that the rules are promulgated pursuant to the legislative mandate contained in Minn. Stat. Sec. 626.843, subd. 1(e). It also provides that the local agencies may adopt standards which are more comprehensive than those contained in the rules and that the local agencies are responsible for enforcement of any standards which are more comprehensive. The Examiner finds that this section of the rule is necessary and reasonable in order to clarify that the statewide minimum standards are not intended to pre-empt the area of standards of conduct and that local agencies are responsible for enforcing local standards. There was some comment that the Board is supposed to adopt standards of conduct which would supercede any local regulation. However, that is not clear from Minn. Stat. Sec. 626.843, subd. 1(e). The Examiner notes that the first sentence of section A. would be more logically placed as a separate section entitled "Authority".

13. 4 MCAR Sec. 13.011 B. is entitled Statement of Purpose and sets out the philosophical bases underlying the method chosen by the Board to carry out its legislative mandate. The Examiner finds that this section as proposed is reasonable and necessary to ensure that those persons reading the rule have a common understanding of basis upon which the Board has acted.

14. 4 MCAR Sec. 13.011 C. requires agencies to establish comprehensive written rules or policies for the administration of internal discipline and to include procedures for filing and investigation of complaints

against peace officers. It also requires the agencies to provide written copies of the rules and policies to all peace officers and to file an annual statement of compliance indicating that they have established such rules and policies. The rule, if adopted, should be amended so that it is clear that agency means local appointing agency.

The Examiner has reviewed Minn. Stat. Sec. 626.84 - Sec. 626.855 and has concluded that the Board lacks the authority to require local appointing agencies to establish comprehensive written rules or policies for the administration of internal discipline. At paragraph 15 of the Findings, the Examiner has discussed the issue of whether the Board must adopt comprehensive standards of conduct. Although the Examiner concludes that the Board need not exercise the full range of its authority in adopting standards, it is not clear that the Board can require local agencies to go beyond the extent of regulation that the Board has selected. The only possible authority for this provision would be Minn. Stat. Sec. 626.845, subd. 1(i). However, the Examiner suggests that a more specific grant of authority is necessary for the Board to place this type of requirement on local authorities.

Even if it is assumed arguendo that the Board can require local authorities to adopt comprehensive written rules for the administration of internal discipline, it is clear that the rule must contain sufficient standards to guide the local authorities' exercise of that authority. The only requirement contained in the proposed rule is that rules must include procedures for filing and investigation of citizen complaints. Also, this section is not necessary to carry out the statutory mandate contained in Minn. Stat. Sec. 626.843, subd. 1(e).

The Examiner finds that the Board lacks statutory authority to require local agencies to comply with this rule, and has failed to demonstrate by an affirmative presentation of facts that this section of the proposed rule is reasonable and necessary.

15. 4 MCAR Sec. 13.012 A. sets forth the standards of conduct which, if violated, shall be grounds for revocation or non-renewal of a license. There was substantial written and oral comment dealing with the proposed standards of conduct as a whole, as well as comment on specific individual standards. Representative Donald Moe criticized the rules because (1) the Board did not fulfill its statutory requirement to establish statewide standards of conduct; (2) the Board lacks authority to place the responsibility for establishing police standards on local units of government; and (3) the rules are unreasonably limited in scope. Matthew Stark of the Minnesota Civil Liberties Union also criticized the rules for not being sufficiently comprehensive or sufficiently directed to specific police activities. Similar comments were received from Norbert Gernges, Director of Portland House; Earl Craig, Urban Coalition of Minneapolis; Common Cause; Joanna Buzek, chairperson of the League of Women Voters Minneapolis' Police Study Committee; and Joseph Rukavina, among others.

In reviewing this portion of the rules, the Examiner is faced with two inquiries. Is there statutory authority to adopt the proposed rules? Are the rules, as proposed, necessary and reasonable? It must be emphasized that the Department is not required to adopt the most reasonable rule, it is only required to make an affirmative presentation of facts showing that the rule is reasonable. It is clear that the proposed rule is necessary in order to carry out the legislative mandate. The rule is reasonable if it is not arbitrary and capricious.

Although there is a general consensus as to the meaning of "necessary" as "required" or "needed", the Examiner believes it is appropriate to define the standard of "reasonable" applied in this proceeding.

"Reasonable" is the opposite of arbitrary and capricious. An arbitrary and capricious standard can be defined as follows:

> That standard (arbitrary and capricious) is a narrow one, to be applied only where administrative action "is not supportable on any rational basis" or where it is "willful and unreasoning action, without consideration and in disregard of the facts or circumstances of the case".

Greenhill v. Bailey, 519 F.2d 5, 10 (8th Cir. 1975). Reasonableness, then, means to have a rational basis for the action.

In setting forth the findings that establish the rational basis for adoption of this rule, the Department's presentation is not limited to only adjudicatory facts. Rulemaking is a legislative function; it is not an adjudicatory function like a contested case. There is a difference between the kind of facts relied on in a rulemaking hearing and the kind of facts relied on in an adjudication. Professor Kenneth Culp Davis identifies this difference:

> Two main elements in rulemaking are (1) facts, and (2) ideas about policies. The two are generally interwoven in such a degree that in some parts of the whole problem of what to do, they are inseparable. Even so, a main element in rulemaking is necessarily the policy choice that the administrator must make. Adoption of a rule may require some understanding of facts, but it always requires legislating. Courts must leave administrators free to legislate, within the limits of rationality. And legislating inevitably involves the addition of something to the facts in the rulemaking record.

K. Davis, Administrative Law of the Seventies, (Cumulative Supp. 1977) (emphasis in original).

The Minnesota Supreme Court has recognized the difference between legislative facts and adjudicatory facts and has identified the support needed to uphold the two kinds of facts. In St. Paul Area Chamber of Commerce v. Minnesota Public Service Comm'n., 251 N.W.2d 350 (Minn. 1977), the Court said:

> . . . (H)owever, rate allocation is not a judicial or quasi-judicial function. Once revenue requirements have been determined it remains to decide how, and from whom, the additional revenue is to be obtained. It is at this point that many countervailing considerations come into play. The commission may then balance factors such as cost of service, ability to pay, tax consequences, and

> ability to pass on increases in order to achieve a fair and reasonable allocation of the increase among consumer classes. . . .It is clear that when the commission acts in this area it is operating in a legislative capacity, as the above cases have stated. The careful balancing of public courts, unless statutory authority has been exceeded or discretion abused. . . .In ascertaining whether or not the statute has been contravened, the district court must give wide latitude to the commission in allowing it to consider many factors which might not ordinarily be considered by a court, as we have explained above. This is so because, while the court is qualified to review agency findings when an agency acts in a quasi-judicial manner in factual matters, it is not so qualified to review legislative judgments when social policies must be weighed in the balance.

Id. at 356-357.

In this rulemaking proceeding, many of the facts are legislative facts--policy decisions and judgments. The inclusion of certain components in the proposed formula is based upon Department policies regarding the goals of Title XX reimbursement. The components included in other formulae proposed by the counties are based on different policies. There is no right answer--there are only reasonable answers.

In another Public Service Commission ratemaking case, Northwestern Bell Telephone Co. v. State, 253 N.W.2d 815 (Minn. 1977), the Minnesota Supreme Court distinguished the two kinds of facts involved in exercising a legislative function. There, the Court said:

> In determining the extent of the allowable adjustment, it appears that the PSC was acting in both a judicial and a legislative capacity. In finding as a fact the amount of the 1974 impact of the contract, the PSC's decision was amply supported by the evidence. In deciding to limit the adjustment to a one-year period, the PSC determined as a matter of public policy that changes occurring more than one year beyond the test year would best be considered in proceedings taking into account all of the facts necessary to accurately set Bell's rates. This determination cannot be said to be arbitrary or unjust. . . .

Id. at 822. See also, Northwestern Bell Telephone Co. v. State, 299 Minn. 1, 216 N.W.2d 841 (1974), and Reserve Mining Co. v. Herbst, 256 N.W.2d 808 (Minn. 1977).

Although the federal rulemaking process differs from that of Minnesota, it would be helpful to examine two federal cases. An example of a federal agency acting on legislative facts is Mourning v. Family Publications Service, Inc., 411 U.S. 356 (1973), where the U.S. Supreme Court upheld regulations of the Federal Reserve Board governing credit transactions of more than four installments. Professor Davis' discussion of the Mourning case is helpful:

> (T)he Supreme Court had no power to change "four" to three or five, because Congress had delegated that power to the Board and the Board had made its determination. On the question of what the number should be, the Court could do no more than determine whether "four" was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

K. Davis, Administrative Law of the Seventies, 206 (Cumulative Supp. 1977).

The Examiner, using the preceding standard of reasonableness in evaluating these rules, has determined that the Board may choose to adopt standards of conduct relating solely to revocation or non-renewal of a peace officer's license. Minn. Stat. Sec. 626.843, subd. 1(e) mandates the adoption of rules regarding minimum standards of conduct. This permits the Board to regulate a wide range of conduct if it so chooses. However, the statute, on its face, does not require the Board to adopt comprehensive rules covering standards of conduct. Representative Moe argues that the legislative intent was that the standards should be comprehensive. Minn. Stat. Sec. 645.16, which deals with legislative intent and construction of statutes provides, in relevant part, as follows:

> . . .When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.
>
> When the words of a law are not explicit, the intention of the legislature may be ascertained by considering. . . .

Since Minn. Stat. Sec. 626.843, subd. 1(e) clearly and unambiguously requires minimum standards, the Examiner finds that the question of legislative intent is not relevant. The Examiner also finds that the Board may choose to adopt rules dealing with standards of conduct that relate solely to revocation or non-renewal of peace officers' licenses. The Board has articulated its reasons for that policy at the hearing and in its Statement of Need and Reasonableness. The Examiner finds that the Board has documented the reasonableness and necessity of that decision.

The Minneapolis Police Officers Federation, by its attorney, submitted a memorandum of law arguing that the Board does not have the authority to revoke the license of a police officer. It is true that Minn. Stat. Sec. 626.841 - Sec. 626.855 do not expressly permit the Board to revoke or not renew peace officers' licenses. However, Minn. Stat. Sec. 626.845 does permit the Board to license peace officers and to perform such other acts as may be necessary and appropriate to carry out the powers and duties set forth in the provisions of Sections 626.841 to 626.855. Furthermore, Minn. Stat. Sec. 214.07, subd. 1(n) requires the Board to report the numbers of persons previously licensed whose licenses were revoked, suspended or otherwise altered in status. Minn. Stat. Sec. 214.11, subd. 2(a) specifically directs initiation of revocation, non-renewal or suspension proceedings against the license of a person convicted of violating Minn. Stat. Sec. 609.23, Sec. 609.231, Sec. 609.465, Sec. 609.466, Sec. 609.52 or Sec. 626.555. Also, 4 MCAR Sec. 13.006 B., which has the full force and effect of law, refers to revocation or suspension of licenses. Therefore, the Examiner concludes that the Board does have the authority to revoke or not renew a peace officer's license.

The Examiner notes that the language of 4 MCAR Sec. 13.012 A. is confusing because the sections which follow it do not set out standards of conduct which, if violated, shall be grounds for revocation or non-renewal

of a license. Those sections set out acts which shall be grounds for revocation or non-renewal of a license. The Examiner suggests that the language should be amended to more accurately reflect the contents of the rule.

16. 4 MCAR Sec. 13.012 A.1. basically provides that the commission of a felony may be the basis of license revocation or non-renewal. This provision was the subject of extensive oral and written comment which indicated that "commission" should be changed to "conviction". The Board's position, as set out in the Statement of Need and Reasonableness, is that discipline for commission of a felony (1) would act as a deterrent; (2) would increase public confidence; and (3) would give the Board an opportunity to make an independent judgment without being under the control of the criminal justice system. Most persons who criticized this provision felt that it was unfair to put peace officers through an additional trial-type proceeding and that the Board did not have the right and/or authority to make an independent determination regarding criminal acts which could lead to loss of an occupational license.

There was some comment that the language "commission of a felony" was confusing. Therefore, the Board is considering changing the language to "commission of an act defined as felony". There were other comments that this provision was duplicative of certain Civil Service or local administrative disciplinary proceedings. The Board comments that it is the only body which can issue or revoke licenses, these would be the only proceedings directed to that end.

Some question was also raised regarding the issues of double jeopardy and collateral estoppel, asserting that the Board may be in violation of the constitutional rights of an officer if it revokes or fails to renew a license because an officer has committed a felony. The Board prepared a legal memorandum at he request of the Examiner. The Board points out that the constitutional prohibition against double jeopardy applies only to successive criminal prosecutions by the same sovereign. The doctrine does not prevent both a criminal sanction and a civil or administrative sanction from being imposed for the same conduct. It also is the position of the Board that the doctrines of res judicata and collateral estoppel would not prevent the imposition of licensure sanctions if a licensee has been acquitted of criminal charges. The doctrines of collateral estoppel and res judicata require that the parties be the same before they may be invoked. Since the Board would not be a party to a criminal action, it would not be bound by the outcome of such criminal case. In addition to numerous other cases, the Board cites State v. House, 219 Minn. 424, 192 N.W.2d 93 (1971), in support of its contention. There, the Minnesota Supreme Court held that the plaintiff in the criminal case was not the same plaintiff as in the license revocation proceedings. Thus, the state in revoking a license is bound neither by any agreement struck in the criminal case nor by the doctrine of estoppel.

The near unanimity of opinion against this section is virtually unprecedented in this Examiner's experience. Other licensing statutes

specifically require conviction of a felony as a basis for license revocation, suspension or non-renewal. See, Minn. Stat. Sec. 326.11, Sec. 326.23, Sec. 326.331, and Sec. 386.70. The Board has given cogent reasons why it believes it is necessary and reasonable to use "commission" rather than "conviction" in this rule. However, the Examiner finds that the Board has not demonstrated by an affirmative presentation of fact that this section of the rule is reasonable and necessary. The Board may have been operating with good intentions in attempting to hold its licensees to the highest standards of conduct. Nevertheless, the Board's attempt to substitute its judgment for that of the criminal justice system in this section of the rule reflects the Board's distrust of that system. In order to demonstrate that it is reasonable for the Board to make an independent judgment whether a felony has been committed, the Board would have to demonstrate some public interest of overriding importance. It has not done so. Furthermore, the Examiner finds that this section as proposed is not necessary to carry out the legislative mandate to establish minimum standards of conduct. A rule providing for revocation or non-renewal of licensure upon conviction of a felony would also carry out the statutory mandate without jeopardizing the fundamental rights of the licensee.

17. 4 MCAR Sec. 13.012 A.2. provides that the use of deadly force when not authorized by Minn. Stat. Sec. 609.066 shall be grounds for revocation or non-renewal of licensure. The Board states that the purpose of this standard is to ensure that peace officers are held to a high standard of care and conduct with regard to the use of deadly force. Comment with regard to this section indicated concern that the rules should establish exactly when a peace officer may use deadly force. The Board notes that Minn. Stat. Sec. 609.066 does exactly that. Peace officers indicated concern that a rule providing for disciplinary action in the event of improper use of excessive force was not reasonable. The Board indicates that this standard reflects existing state law and, as such, is reasonable. There was also concern regarding the procedural mechanics of determining whether the use of deadly force was reasonable. As noted by the Board, such a determination would be made pursuant to Minn. Stat. Ch. 214 and Minn. Stat. Ch. 15, in a contested case proceeding conducted by the Office of Hearing Examiners. It is the position of the Board that this would guarantee that fair procedures were used. The Examiner finds that this section of the rule, as proposed, is necessary and reasonable.

18. 4 MCAR Sec. 13.012 A.3. prohibits the making of false material statements under oath to the Board which the peace officer does not believe to be true. The Board indicates that it must be able to obtain honest answers and factually correct information in the regulation of the conduct and activities of peace officers. There was no comment with regard to this rule. The Examiner finds that it is necessary and reasonable.

19. 4 MCAR Sec. 13.012 A.4. - A.7. deal with violations of various licensing provisions as set forth in 4 MCAR Sec. 13.001 - 13.020. There was

no comment at the hearing with regard to those rules. The Examiner adopts the Statement of Need and Reasonableness with regard thereto and finds that these sections, as proposed, are necessary and reasonable.

20. 4 MCAR Sec. 13.012 B. provides that investigation and hearing of complaints under the rule shall be conducted pursuant to Minn. Stat. Sec. 214.10 and Sec. 214.11. The Minnesota Police Chiefs Association offered testimony questioning the feasiblity of placing the investigation and hearing process under Minn. Stat. Ch. 214. The Board indicated at the hearing that there were some potential conflicts between the provisions of Chapter 214 and the proposed rules which were being addressed to the Legislature during the current session. However, at this time the provisions of statute require that investigation and discipline be carried out under that chapter. The Examiner finds that this portion of the rule, as proposed, is necessary and reasonable.

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

CONCLUSIONS

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

2. That the Board has statutory authority to take the action proposed, to wit: the promulgation of the proposed rules with the exceptions noted herein.

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

4. That except as otherwise noted the Board has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record.

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

RECOMMENDATION

It is recommended that the Peace Officer Standards and Training Board not adopt 4 MCAR Sec. 13.011 C. and 4 MCAR Sec. 13.012 A.1.; and

It is further recommended that the remainder fo the rules be adopted by the Board with consideration given to the Findings of Fact herein.

Dated: April 20, 1979.

NATALIE L. GAULL
State Hearing Examiner

N O T I C E

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 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.

CERTIFICATE OF BOARD'S
ADOPTION OF RULES RESOLUTION

I, Mark K. Shields, certify that I am Executive Director of the Minnesota Board of Peace Officer Standards and Training, 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 meetings of the Minnesota Board of Peace Officer Standards and Training duly and properly called and held on the 20th of February, 1979; the 21st of February, 1979; the 22nd of February, 1979; and March 1, 1979; that a quorum was present at said meetings; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meetings and has not been rescinded or modified.

> "RESOLVES, that the rules relating to the minimum standards of conduct of peace officers and constables be and they hereby are approved and adopted, pursuant to authority vested in us by M.S. § 626.84 et seq. (Supp. 1977), as amended by Laws of 1978, ch. 681, and that Richard W. Setter, one of the members of the Minnesota Board of Peace Officer Standards and Training, be and hereby is authorized to sign an order adopting these rules."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 30 day of August, 19 79.

Mark K. Shields
Executive Director

Jean M. Mahr

JEAN M. MAHR
Notary Public, Ramsey County, Minn.
My Commission Expires May 21, 1983

Exhibit 7

Peace Officer Standards and
Training Board

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OFFICE OF HEARING
EXAMINERS

Notice of Intent to Solicit Outside
Opinion Concerning Proposed Rules
Governing Peace Officers' Standards
of Conduct

Notice is hereby given, pursuant to the provisions of Minn. Stat. § 626.84 et seq. (Supp. 1977), as amended by Laws of 1978, Ch. 681, that the Minnesota Board of Peace Officers Standards and Training will propose to adopt new rules regarding professional standards of conduct for all licensed peace officers in the State of Minnesota. All interested parties desiring to submit data or views relating to the proposed rules should address their written comments to:

Mr. Mark K. Shields, Executive Director
Minnesota Peace Officers Standards
and Training Board
500 Metro Square
St. Paul, MN 55101

All material received will be made part of the hearing record. All material must be received by no later than October 13, 1978.

Published State Reg 9/18/78
page 586

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Richard Hodsdon, 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.

Richard Hodsdon
Special Assistant Attorney General

Dated: August 31, 1979

MINNESOTA BOARD OF
PEACE OFFICER STANDARDS AND TRAINING
500 METRO SQUARE BUILDING
ST. PAUL, MINNESOTA 55101

Mark K. Shields
Executive Director
(612) 296-2620

August 30, 1979

Mr. Lee Sheehy
Special Assistant Attorney General
Room G25
Administration Building
505 Sherburne Avenue
St. Paul, MN 55155

RE: POST Board Rules 4 MCAR 13.011 to 13.013

Dear Mr. Sheehy:

Enclosed is the original and a copy of the files and records of the POST Board and the rules of the Board as adopted. Also enclosed is a second copy of the rules as adopted and the order adopting the rules.

These documents are delivered to you pursuant to the requirements of the Administrative Procedures Act and the rules adopted thereunder.

Sincerely,

Mark K. Shields

Mark K. Shields
Executive Director

MKS:jm
Enc.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE Natalie Gaull,
HEARING EXAMINER

In the matter of the Proposed Adoption of Rules of the Minnesota Board of Peace Officer Standards and Training Governing the Minimum Standards of Conduct of Peace Officers and Constables.

ORDER ADOPTING RULES

The above entitled matter came on for hearing before Natalie Gaull, hearing examiner of the State of Minnesota on the 20th day of February, 1979, in the Metropolitan Council hearing room, Third Floor, Metro Square Building, St. Paul, Minnesota 55101, at 9:30 a.m.; on the 21st day of February, 1979, in the Department of Commerce hearing room, Fifth Floor, Metro Square Building, St. Paul, Minnesota 55101, at 9:30 a.m.; on the 22nd day of February, 1979, in Room 217, Lecture Center Building, Southwest State University, Marshall, Minnesota at 7:00 p.m.; and on the 1st day of March, 1979, in the St. Louis County Board Room, Second Floor, Fifth Avenue West at First Street, Duluth, Minnesota 55802, at 1:30 p.m. and 7:00 p.m.; after proper notice required by M.S. 1978, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having 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 §§ 13.001 - 13.013 are adopted this 29th day of August, 1979, pursuant to authority vested in me by M.S. § 626.84 et seq., (Supp. 1977), as amended by Laws of 1978, ch. 681.

STATE OF MINNESOTA
MINNESOTA BOARD OF PEACE OFFICER
STANDARDS AND TRAINING

Richard M Sutter

CHAIRMAN

DMIN 1000

STATE OF MINNESOTA

DEPARTMENT P.O.S.T.

Office Memorandum

TO : Natalie Gaull

RECEIVED
JAN 16 ...
OFFICE OF HEARING EXAMINERS

DATE: January 16, 1979

FROM : Mark K. Shields
Executive Director

SUBJECT: Notice of Hearing

After you called me this a.m. regarding the problems with our Notice of Hearing, I called our Board attorneys to inquire as to a specific reason for our error. Both of our attorneys are out of town on trials which leaves me to believe that Mr. Sheehy called after not being able to get in touch with Norm or Dick. I spoke with Sheehy briefly this a.m. and was told of the new rules for the Hearing Examiner's office. I am a little disappointed that our Board attorneys had not informed us of such and that we were advised to proceed with our placement of the Notice of Hearing in the Register utilizing the same procedures and format of our previous rules process. Please advise me of what action can be taken to insure that our hearing date stays intact and that we are still in compliance with requirements set forth by your agency.

MKS:cfl

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JAN 1[illegible] 197[illegible]
OFFICE OF HEARING
EXAMINERS

Notice of Hearing

Notice is hereby given that a public hearing on the proposed permanent rules of the Peace Officer Standards and Training Board will be held on February 20, 1979 beginning at 9:30 a.m. at the Metropolitan Council, 3rd Floor, Metro Square Building, Hearings Room. On February 21, 1979 at 9:30 a.m., Department of Commerce, 5th Floor, Metro Square Building, Hearings Room. On February 22, 1979 at 7:00 p.m., Rm. 217 Lecture Center Building, Southwest State University, Marshall, MN. On March 1, 1979 at 1:30 p.m. and 7:00 p.m. at the St. Louis County Board Room, 2nd Floor, 5th Avenue West at 1st Street, Duluth, MN 55802.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted by mail to Natalie Gaull, Hearing Examiner, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8114, either before the hearing or within twenty (20) days after the close of the hearing.

The proposed rules, if adopted would govern the Standards of Conduct for peace officers in certain specified areas and delineate the responsibilities of local units of government in terms of regulating the conduct of their own peace officers. Copies of the proposed rules are now available and one (1) free copy may be obtained by writing to: POST Board, 5th Floor Metro Square Building, Saint Paul, Minnesota 55101, telephone (612) 296-2620. Additional copies will be available at the door on the date of the hearing. The POST Board's authority to promulgate the proposed rules is contained in Minn. Stat. 1978 §§ 626.84 to 626.855. A Statement of Need explaining why the board feels the proposed rules are necessary and a Statement of Evidence outlining the testimony it will be introducing will be filed with the Hearing Examiner's Office at least twenty-five (25) days prior to the hearing and will be available at that location for public inspection.

Please be advised that pursuant to Minn. Stat. § 10A.01, Subd. 11 (1976), any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five (5) days of the commencement of such activity by the individual.

December 28, 1978.

Mark K. Shields
Executive Director

Exhibit 2

RECEIVED
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OFFICE OF HEARING
EXAMINERS

Peace Officer Standards
and Training Board
Amended Notice of Hearing
Regarding Proposed Rules
Governing Standards of
Conduct for Peace Officers
and Constables

Amended Notice of Hearing

Notice of hearing regarding proposed rules governing standards of conduct for peace officers and constables, published at State Register, Volume 3, Number 28, pp. 1412 - 1413, on January 15, 1979, contained errors and omissions and is reprinted as follows:

Notice of Hearing

Notice is hereby given that public hearings in the above-entitled matter will be held on February 20, 1979 beginning at 9:30 a.m. at the Metropolitan Council, 3rd Floor, Metro Square Building, Hearings Room; on February 21, 1979 at 9:30 a.m., Department of Commerce, 5th Floor, Metro Square Building, Hearings Room; on February 22, 1979 at 7:00 p.m., Rm. 217 Lecture Center Building, Southwest State University, Marshall, MN; on March 1, 1979 at 1:30 p.m. and 7:00 p.m. at the St. Louis County Board Room, 2d Floor, 5th Avenue West at 1st Street, Duluth, MN 55802, and

continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Natalie Gaull, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within 5 working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner. Written material submitted within the above time limits will be recorded in the hearing record.

The proposed rules regarding the standards of conduct for peace officers and constables were published at State Register, Volume 3, Number 28, pp. 1412 - 1413, on January 15, 1979.

Copies of the proposed rules will be available at the door on the date of the hearing and one free copy can now be obtained by writing to: POST Board, 5th Floor Metro Square Building, Saint Paul, Minnesota 55101, telephone (612) 296-2620. The POST Board's authority to promulgate the proposed rules is contained in Minn. Stat. §§ 626.84 to 626.855 (1978).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiner at a minimal charge.

Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five 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 agency. 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 agency (in the case of the agency's submission or resubmission to the Attorney General).

Please be advised that pursuant to Minn. Stat. 10A.01, subd. 11 (1976) as amended by Laws of 1978, ch. 463, § 11, 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 must register with the State Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual. The statute provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-1723.

January 16, 1979

Mark K. Shields

Mark K. Shields

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OFFICE OF HEARING EXAMINERS

Peace Officer Standards and Training Board

Amended Notice of Hearing Regarding Proposed Rules Governing Standards of Conduct for Peace Officers and Constables

Amended Notice of Hearing

Notice of hearing regarding proposed rules governing standards of conduct for peace officers and constables, published at State Register, Volume 3, Number 28, pp. 1412 - 1413, on January 15, 1979, contained errors and omissions and is reprinted as follows:

Notice of Hearing

Notice is hereby given that public hearings in the above-entitled matter will be held on February 20, 1979 beginning at 9:30 a.m. at the Metropolitan Council, 3rd Floor, Metro Square Building, Hearings Room; on February 21, 1979 at 9:30 a.m., Department of Commerce, 5th Floor, Metro Square Building, Hearings Room; on February 22, 1979 at 7:00 p.m., Rm. 217 Lecture Center Building, Southwest State University, Marshall, MN; on March 1, 1979 at 1:30 p.m. and 7:00 p.m. at the St. Louis County Board Room, 2nd Floor, 5th Avenue West at 1st Street, Duluth, MN 55802, and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Natalie Gaull, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within 5 working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner. Written material submitted within the above time limits will be recorded in the hearing record.

The proposed rules regarding the standards of conduct for peace officers and constables were published at State Register, Volume 3, Number 28, pp. 1412 - 1413, on January 15, 1979.

Copies of the proposed rules will be available at the door on the date of the hearing and one free copy can now be obtained by writing to: POST Board, 5th Floor Metro Square Building, Saint Paul, Minnesota 55101, telephone (612) 296-2620. The POST Board's authority to promulgate the proposed rules is contained in Minn. Stat. §§ 626.84 to 626.855 (1978).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiner at a minimal charge.

Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five 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 agency. 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 agency (in the case of the agency's submission or resubmission to the Attorney General).

Please be advised that pursuant to Minn. Stat. 10A.01, subd. 11 (1976) as amended by Laws of 1978, ch. 463, § 11, 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 must register with the State Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual. The statute provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-1723.

January 16, 1979

Mark K. Shields

Rules as Proposed

4 MCAR § 13.011 Standards of conduct.

A. Scope. The rules promulgated in this section are adopted pursuant to the express legislative mandate of Minn. Stat. § 626.843 subd. 1(e). Nothing in these rules shall preclude or prevent any agency, political subdivision, civil service commission or other appointing authority from publishing and enforcing rules, policies or procedures which are more comprehensive than those minimum statewide standards set forth hereinafter. The responsibility for enforcing any rules, policies or procedures which are more comprehensive than the following minimum standards of conduct shall remain with the promulgating agency, political subdivision, commission or appointing authority.

B. Statement of purpose. The board believes that in order for the public to have complete confidence in the integrity and ability of law enforcement, it is paramount that peace officers demonstrate that they are capable of self-regulation. The board further believes that internal discipline is properly a function of the appointing agency and its political subdivision. These standards of conduct relate to licensure only and violations thereof do not enlarge on a peace officer's civil or criminal liability in any way.

C. Responsibilities of individual agencies. Agencies shall establish comprehensive written rules or policies for the administration of internal discipline. Such rules or policies should include simple and direct procedures whereby individuals may register written complaints concerning alleged misconduct by peace officers. The local agency shall provide that complaints shall be promptly and thoroughly investigated. At the conclusion of the local agency investigation the findings shall be made known to the complainant.

1. Such written rules, policies and procedures shall be furnished to all peace officers within the agency.

2. Within 1 year of the effective date of § 13.011 each agency shall file with the Board a verified statement of compliance of § 13.011 C.

3. Commencing July 1, 1981 each agency shall file with the Board on an annual basis a verified statement of compliance with § 13.011 C.

4 MCAR § 13.012 Standards.

A. Violations of the following Standards of Conduct by a licensed peace officer shall be grounds for revocation or non-renewal of license:

1. The commission of a felony in this state or in any other state or federal jurisdiction or of any offense in any other state or federal jurisdiction which would have been a felony if committed in Minnesota.

2. The use of deadly force when not authorized by Minn. Stat. § 609.066.

3. To make a false material statement under oath to the Board which the peace officer does not believe to be true.

4. To have made a false material statement to the Board while obtaining or renewing a license.

5. Failure to comply with the Board's continuing education requirements as set forth in 4 MCAR § 13.008.

6. Failure to pay the licensing fee as set forth in 4 MCAR § 13.007.

7. Violation of Board rules as set forth in 4 MCAR § 13.001-§ 13.020.

B. Complaints; investigation and hearing. Complaints, investigations and hearings under rule § 13.012 shall be pursuant to Minn. Stat. § 214.10 and § 214.11.

Rules as Proposed

4 MCAR § 13.011 Standards of conduct.

A. Scope. The rules promulgated in this section are adopted pursuant to the express legislative mandate of Minn. Stat. § 626.843 subd. 1(e). Nothing in these rules shall preclude or prevent any agency, political subdivision, civil service commission or other appointing authority from publishing and enforcing rules, policies or procedures which are more comprehensive than those minimum statewide standards set forth hereinafter. The responsibility for enforcing any rules, policies or procedures which are more comprehensive than the following minimum standards of conduct shall remain with the promulgating agency, political subdivision, commission or appointing authority.

B. Statement of purpose. The board believes that in order for the public to have complete confidence in the integrity and ability of law enforcement, it is paramount that peace officers demonstrate that they are capable of self-regulation. The board further believes that internal discipline is properly a function of the appointing agency and its political subdivision. These standards of conduct relate to licensure only and violations thereof do not enlarge on a peace officer's civil or criminal liability in any way.

C. Responsibilities of individual agencies. Agencies shall establish comprehensive written rules or policies for the administration of internal discipline. Such rules or policies should include simple and direct procedures whereby individuals may register written complaints concerning alleged misconduct by peace officers. The local agency shall provide that complaints shall be promptly and thoroughly investigated. At the conclusion of the local agency investigation the findings shall be made known to the complainant.

1. Such written rules, policies and procedures shall be furnished to all peace officers within the agency.

2. Within 1 year of the effective date of § 13.011 each agency shall file with the Board a verified statement of compliance of § 13.011 C.

3. Commencing July 1, 1981 each agency shall file with the Board on an annual basis a verified statement of compliance with § 13.011 C.

4 MCAR § 13.012 Standards.

A. Violations of the following Standards of Conduct by a licensed peace officer shall be grounds for revocation or non-renewal of license:

1. The commission of a felony in this state or in any other state or federal jurisdiction or of any offense in any other state or federal jurisdiction which would have been a felony if committed in Minnesota.

2. The use of deadly force when not authorized by Minn. Stat. § 609.066.

3. To make a false material statement under oath to the Board which the peace officer does not believe to be true.

4. To have made a false material statement to the Board while obtaining or renewing a license.

5. Failure to comply with the Board's continuing education requirements as set forth in 4 MCAR § 13.008.

6. Failure to pay the licensing fee as set forth in 4 MCAR § 13.007.

7. Violation of Board rules as set forth in 4 MCAR § 13.001-§ 13.020.

B. Complaints: investigation and hearing. Complaints, investigations and hearings under rule § 13.012 shall be pursuant to Minn. Stat. § 214.10 and § 214.11.

RECEIVED
JAN 17 1979
OFFICE OF HEARING EXAMINERS

Peace Officer Standards and Training Board

Proposed Permanent Rules Governing
Standards of Conduct for Peace
Officers and Constables

Order for Hearing

It is hereby ordered that a public hearing on the proposed permanent rules of the Peace Officer Standards and Training Board be held at the following dates and locations. On February 20, 1979 beginning at 9:30 a.m. at the Metropolitan Council, 3rd Floor, Metro Square Building, Hearings Room. On February 21, 1979 at 9:30 a.m., Department of Commerce, 5th Floor, Metro Square Building, Hearings Room. On February 22, 1979 at 7:00 p.m. Pm. 217 Lecture Center Building, Southwest State University, Marshall, MN. On March 1, 1979 at 1:30 p.m. and 7:00 p.m. at the St. Louis County Board Room, 2nd Floor, 5th Avenue West at 1st Street, Duluth, MN 55802. All scheduled meetings will continue until all persons have had an opportunity to be heard.

It is further ordered that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

It is further ordered that the Notice of Hearing be published in the State Register.

December 28, 1978.

Mark K. Shields
Mark K. Shields
Executive Director

Exhibit 1

RECEIVED
JAN 16
OFFICE OF HEARING EXAMINERS

Peace Officer Standards and Training Board

Proposed Permanent Rules Governing Standards of Conduct for Peace Officers and Constables

Order for Hearing

It is hereby ordered that a public hearing on the proposed permanent rules of the Peace Officer Standards and Training Board be held at the following dates and locations. On February 20, 1978 beginning at 9:30 a.m. at the Metropolitan Council, 3rd Floor, Metro Square Building, Hearings Room. On February 21, 1978 at 9:30 a.m., Department of Commerce, 5th Floor, Metro Square Building, Hearings Room. On February 22, 1978 at 7:00 p.m. Rm. 217 Lecture Center Building, Southwest State University, Marshall, MN. On March 1, 1978 at 1:30 p.m. and 7:00 p.m. at the St. Louis County Board Room, 2nd Floor, 5th Avenue West at 1st Street, Duluth, MN 55802. All scheduled meetings will continue until all persons have had an opportunity to be heard.

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December 28, 1978.

Mark K. Shields
Executive Director

Notice of Hearing

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All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted by mail to Natalie Gaull, Hearing Examiner, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8114, either before the hearing or within twenty (20) days after the close of the hearing.

The proposed rules, if adopted would govern the Standards of Conduct for peace officers in certain specified areas and delineate the responsibilities of local units of government in terms of regulating the conduct of their own peace officers. Copies of the proposed rules are now available and one (1) free copy may be obtained by writing to: POST Board, 5th Floor Metro Square Building, Saint Paul, Minnesota 55101, telephone (612) 296-2620. Additional copies will be available at the door on the date of the hearing. The POST Board's authority to promulgate the proposed rules is contained in Minn. Stat. §§626.84 to 626.855 (1978).

A Statement of Need explaining why the board feels the proposed rules are necessary and a Statement of Evidence outlining the testimony it will be introducing will be filed with the Hearing Examiner's Office at least twenty-five (25) days prior to the hearing and will be available at that location for public inspection.

Please be advised that pursuant to Minn. Stat. § 10A.01, Subd. 11 (1976), any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five (5) days of the commencement of such activity by the individual.

December 28, 1978.

Mark K. Shields
Executive Director

Commissioner's inspection shall be limited to testing and observing, rather than supervising the construction, operation, maintenance, alteration or abandonment of the dam. The Commissioner's inspections shall not relieve the owner, or the designer, or the professional engineer in charge of construction, operation, maintenance, alteration or abandonment, from the full responsibility of providing adequate inspection and supervision.

F. Compliance with other laws. The owner of a dam shall comply with all federal laws and regulations relating to any structures, facilities or operations under the permit and shall obtain such permits from federal authorities as may be required therefor. The owner shall comply with all state laws and regulations in effect now or adopted hereafter relating to such structures, facilities and operations, including but not limited to, any laws and rules regarding mineland reclamation subject to the provisions of a permit.

G. Other permits and approvals. Although it is the intent of the Commissioner to maintain consistency with the permits of other agencies, nothing in any permit shall waive or abrogate any other state or federal approvals or permits which may be necessary for the project involved. Any permit conditions for dams shall not waive or abrogate any conditions, whether similar or more stringent, which may appear in any other permit or approval.

H. Acquisition of property. In all cases where the activities authorized by a permit shall involve the taking, using or damaging of any property, rights, or interests of any other person or persons, or of any publicly owned lands or improvements thereon or interests therein, the permittee, before proceeding, shall acquire all necessary property, rights, interests or permissions. In case the authorized activities shall include the alteration, relocation or replacement of any public highway or other publicly owned facility, the permittee shall pay the cost thereof as may be required by the appropriate public authority.

I. Assignment. Permits for dams may be assigned in whole or in part, but no assignment shall be effective until written notice thereof is filed in the office of the Commissioner, and the Commissioner approves the assignment in writing.

J. Successors. Provisions of the issued permit shall extend to and bind the successors in authority of the Commissioner and the legally assigned successors in interest of the permittee.

K. Warning systems and emergency procedures.

1. In the event that an existing or new dam is classified as a Class I or II Hazard dam, the owner shall prepare and file with the Commissioner, for approval, a contingency plan for notifying any persons whose lives, property or health may be endangered by failure, misoperation or other circumstances or occurrence affecting the dam. The contingency plan shall include:

a. The most practical and expeditious means for warning downstream property owners and residents.

b. Consideration of the time factor involved in providing warning based on the proximity of the dam to parties who may be affected.

2. In the event there is no feasible or practical means to provide for adequate warning due to insufficient time before a catastrophe occurs and downstream parties can be notified to evacuate, the owner shall be responsible for giving appropriate notification to any downstream property owners that there is no practical and feasible means for warning in emergency situations.

These rules, 6 MCAR §§ 1.5030-1.5034, are subject to the public hearing provisions of Minn. Stat. §§ 105.44-105.462.

Peace Officer Standards and Training Board

Proposed Rules Governing Standards of Conduct for Peace Officers and Constables

Notice of Hearing

Notice is hereby given that a public hearing on the proposed permanent rules of the Peace Officer Standards and Training Board will be held on February 20, 1979 beginning at 9:30 a.m. at the Metropolitan Council, 3rd Floor, Metro Square Building, Hearings Room; on February 21, 1979 at 9:30 a.m., Department of Commerce, 5th Floor, Metro Square Building, Hearings Room; on February 22, 1979 at 7:00 p.m., Rm. 217 Lecture Center Building, Southwest State University, Marshall, MN; on March 1, 1979 at 1:30 p.m. and 7:00 p.m. at the St. Louis County Board Room, 2nd Floor, 5th Avenue West at 1st Street, Duluth, MN 55802.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted by mail to Natalie Gaull, Hearing Examiner, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8114, either before the hearing or within twenty (20) days after the close of the hearing.

The proposed rules, if adopted, would govern the Standards of Conduct for peace officers in certain specified

areas and delineate the responsibilities of local units of government in terms of regulating the conduct of their own peace officers. Copies of the proposed rules are now available and one (1) free copy may be obtained by writing to: POST Board, 5th Floor Metro Square Building, Saint Paul, Minnesota 55101, telephone (612) 296-2620. Additional copies will be available at the door on the date of the hearing. The POST Board's authority to promulgate the proposed rules is contained in Minn. Stat. §§ 626.84 to 626.855 (1978).

A Statement of Need explaining why the board feels the proposed rules are necessary and a Statement of Evidence outlining the testimony it will be introducing will be filed with the Hearing Examiner's Office at least twenty-five (25) days prior to the hearing and will be available at that location for public inspection.

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1976), any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as promulgation of these rules, must register with the Ethical Practices Board as a lobbyist within five (5) days of the commencement of such activity by the individual.

December 28, 1978

Mark K. Shields
Executive Director

Rules as Proposed

4 MCAR § 13.011 Standards of conduct.

A. Scope. The rules promulgated in this section are adopted pursuant to the express legislative mandate of Minn. Stat. § 626.843 subd. 1(e). Nothing in these rules shall preclude or prevent any agency, political subdivision, civil service commission or other appointing authority from publishing and enforcing rules, policies or procedures which are more comprehensive than those minimum statewide standards set forth hereinafter. The responsibility for enforcing any rules, policies or procedures which are more comprehensive than the following minimum standards of conduct shall remain with the promulgating agency, political subdivision, commission or appointing authority.

B. Statement of purpose. The board believes that in order for the public to have complete confidence in the integrity and ability of law enforcement, it is paramount that peace officers demonstrate that they are capable of self-regulation. The board further believes that internal discipline is properly a function of the appointing agency and its political subdivision. These standards of conduct relate to licensure only and violations thereof do not enlarge on a peace officer's civil or criminal liability in any way.

C. Responsibilities of individual agencies. Agencies shall establish comprehensive written rules or policies for the administration of internal discipline. Such rules or policies should include simple and direct procedures whereby individuals may register written complaints concerning alleged misconduct by peace officers. The local agency shall provide that complaints shall be promptly and thoroughly investigated. At the conclusion of the local agency investigation the findings shall be made known to the complainant.

1. Such written rules, policies and procedures shall be furnished to all peace officers within the agency.

2. Within 1 year of the effective date of § 13.011 each agency shall file with the Board a verified statement of compliance of § 13.011 C.

3. Commencing July 1, 1981 each agency shall file with the Board on an annual basis a verified statement of compliance with § 13.011 C.

4 MCAR § 13.012 Standards.

A. Violations of the following Standards of Conduct by a licensed peace officer shall be grounds for revocation or non-renewal of license:

1. The commission of a felony in this state or in any other state or federal jurisdiction or of any offense in any other state or federal jurisdiction which would have been a felony if committed in Minnesota.

2. The use of deadly force when not authorized by Minn. Stat. § 609.066.

3. To make a false material statement under oath to the Board which the peace officer does not believe to be true.

4. To have made a false material statement to the Board while obtaining or renewing a license.

5. Failure to comply with the Board's continuing education requirements as set forth in 4 MCAR § 13.008.

6. Failure to pay the licensing fee as set forth in 4 MCAR § 13.007.

7. Violation of Board rules as set forth in 4 MCAR § 13.001-§ 13.020.

B. Complaints: investigation and hearing. Complaints, investigations and hearings under rule § 13.012 shall be pursuant to Minn. Stat. § 214.10 and § 214.11.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

Exh. 6, # 3

STATE OF MINNESOTA

BOARD OF PEACE OFFICER STANDARDS AND TRAINING

RECEIVED
JAN 26 19
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE PEACE OFFICER STANDARDS AND TRAINING BOARD, GOVERNING RULES OF CONDUCT FOR PEACE OFFICERS.

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Ralph A. Olmos, being duly sworn on oath deposes and says:

1. That he is an employee of the Minnesota Board of Peace Officer Standards and Training.

2. That on the 17th day of January, 1979, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to 15.0412.

3. That on that date, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Ralph A. Olmos

RALPH A. OLMOS

Subscribed and sworn to before me
this 23rd day of January, 1979.

S. G. Seitzhoff

S. G. SEITZHOFF
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Comm. Expires Dec. 16, 1981

EXHIBIT 5

STATE OF MINNESOTA

BOARD OF PEACE OFFICER

STANDARDS AND TRAINING

RECEIVED
JAN 26 19
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Adoption of Rules of the Minnesota Board of Peace Officer Standards and Training Governing Standards of Conduct for Peace Officers

AFFIDAVIT OF MAILING

James F. Lynch being duly sworn deposes and says:

That on the 15th day of January, 1979, at the City of Saint Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of Saint Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations listed on the attached Certificate of the Secretary of State.

James F. Lynch

Subscribed and sworn to before me this 16th day of January, 1979.

Sandy A. Falzone

SANDY A. FALZONE
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires May 3, 1985

Exhibit 6

RECEIVED
JAN 26 19[illegible]
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

BOARD OF PEACE OFFICER

STANDARDS AND TRAINING

In the Matter of the Proposed Adoption of Rules of the Minnesota Board of Peace Officer Standards and Training Governing Standards of Conduct for Peace Officers

AFFIDAVIT OF MAILING

James F. Lynch, being duly sworn deposes and says:

That on the 19th day of January, 1979, at the City of Saint Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of Saint Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations listed on the attached Certificate of the Secretary of State.

James F. Lynch

Subscribed and sworn to before me this 23rd day of January, 1979.

Sandy A. Falzone

SANDY A. FALZONE
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires May 3, 1985

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

July 2, 1979

Mr. Mark K. Shields
Executive Director
Minnesota Board of Peace Officer
Standards and Training
500 Metro Square Building
Saint Paul, Minnesota 55101

Re: In the Matter of the Proposed Adoption of the Rules of the Minnesota Board of Peace Officer Standards and Training Governing Standards of Conduct for Peace Officers and Constables. Docket No. POST-79-001-NG.

Dear Mr. Shields:

Enclosed is the Report of the Chief Hearing Examiner and the original documents you submitted to me for review as enumerated in your letter of June 22, 1979.

Sincerely,

DUANE R. HARVES
Chief Hearing Examiner

DRH:sw
Encs.
cc: Mr. Lee Sheehy

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA BOARD OF PEACE OFFICER
STANDARDS AND TRAINING

IN THE MATTER OF THE PROPOSED
ADOPTION OF THE RULES OF THE
MINNESOTA BOARD OF PEACE OFFICER
STANDARDS AND TRAINING GOVERNING
STANDARDS OF CONDUCT FOR PEACE
OFFICERS AND CONSTABLES.

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, the above-entitled matter came on for hearing before Natalie L. Gaull, a Hearing Examiner of the State Office of Hearing Examiners, on February 20, 1979; February 21, 1979; February 22, 1979; and March 1, 1979, in compliance with Minn. Stat. Sec. 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. Sec. 15.052, subd. 3, was issued to the Minnesota Board of Peace Officer Standards and Training (hereinafter "Board") on April 20, 1979; and

WHEREAS, the Board has now determined to adopt rules pursuant to Minn. Stat. Sec. 15.0412, subd. 4; and

WHEREAS, the Board has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. Sec. 15.052, subd. 4, and 9 MCAR Sec. 2.110; and

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

WHEREAS, the Chief Hearing Examiner finds that the Board has not met all requirements of Minn. Stat. Sec. 15.0412, subd. 4, in that the Board has failed to make an affirmative presentation of facts establishing the need for and reasonableness of adopted rule 4 MCAR Sec. 13.012, nor had it demonstrated that it has statutory authority to adopt this rule, thus failing to fulfill "any relevant substantive or procedural requirements imposed on the agency by law" as required by Minn. Stat. Sec. 15.0412, subd. 4.

NOW, THEREFORE, pursuant to the provisions of Minn. Stat. Sec. 15.052, subd. 4 and 9 MCAR Sec. 2.111, the agency shall either withdraw rule 4 MCAR Sec. 13.012 or reconvene the rule hearing. If it withdraws 4 MCAR Sec. 13.012, 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. Sec. 15.0412, subd. 4.

Dated this 2nd day of July, 1979.

DUANE R. HARVES
Chief Hearing Examiner

STATEMENT OF NEED AND REASONABLENESS

REGARDING PROPOSED PERMANENT RULES OF THE

MINNESOTA BOARD OF PEACE OFFICER STANDARDS AND TRAINING

4 MCAR § 13.011 Standards of Conduct

A. Scope. Minn. Stat. § 626.843 Subd. 1 (e) and Minn. Stat. § 626.845 Subd. 1 (i) authorize the Peace Officer Standards and Training Board to promulgate minimum standards of conduct for all Minnesota Peace Officers. While recognizing that there are minimal requirements of conduct to which each peace officer of this State must conform, it is also true that local law enforcement agencies may properly require more of the officers they employ than compliance with these minimum standards. These rules are not intended to replace the routine and necessary control of local law enforcement agencies over their personnel.

B. Statement of Purpose. The Board as the licensing agency of the state believes it is necessary and reasonable for the peace officer profession to be self regulatory. Discipline of peace officers is a responsibility of supervision within each employing agency. The standards specified in 4 MCAR § 13.012 relate to the Board's role of granting and revoking licenses of peace officers. These rules maximize local control over law enforcement activities while insuring the citizens of Minnesota that certain conduct is required of all peace officers. Therefore, it is considered necessary and reasonable to define the limit of the Board's involvement in disciplinary action to that of granting or revoking a license.

C. Responsibilities of Individual Agencies. The Board recognizes that many agencies throughout the state have established comprehensive written rules or policies for the administration of internal discipline. Because of the nature of the job, the peace officer often comes in contact with citizens in stressful situations. In some of these situations conflicts between the peace officer and citizen ensue. Peaceful resolution of these conflicts is a goal of law enforcement. Effective law enforcement requires protection of the rights of both citizen and peace officer. A reasonable way of achieving this goal is to establish procedures for citizens to register complaints against peace officers concerning alleged misconduct. The rights of the peace officer are protected by adopting a set of comprehensive written rules which establish guidelines for acceptable conduct and procedures for investigating complaints. Investigation and prompt resolution of complaints is fundamental to this procedure for citizens to register complaints against peace officers concerning alleged misconduct. The Board recognizes that some agencies do not have current policy manuals. The Board intends to send a prototype policy manual to an agency on request and assist that agency in adopting the prototype to their department.

1. It is reasonable and necessary for each officer to be informed and have access to these rules and policies, since a disciplinary action against an officer requires that the officer be forewarned that specific activities are required or prohibited. Written rules and policies provide a reasonable way to convey this information.

2. It is necessary for the Board to have a mechanism to assure compliance from each agency with the section of Rule C that mandates a written rule and policy manual. The filing of a statement of compliance within one year of the effective date of this rule is a reasonable time period for an agency to establish their policies.

3. It is reasonable and necessary for each agency to maintain their rule and policy manual. The Board requires a yearly verification statement from each agency to assure that the manual is currently in force.

4 MCAR § 13.012 Standards

A. Minn. Stat. § 626.843, Subd. 1 (e) (1978), requires the Board to establish minimum standards of conduct which would affect the performance of the individual in his duties as a peace officer.

This legislation requires the Board to state the minimum level of conduct below which no peace officer can fall without being subject to disciplinary action. When a violation of these standards is proven to the Board by clear and convincing evidence after a hearing as required by Minn. Stat. § 214.10 (1978) and Minn. Stat. ch. 15 (1978), it is clear that the individual peace officer cannot conform his conduct to that required of all other licensed peace officers and that he is not fit to engage in the profession of law enforcement.

1. This rule is reasonable and necessary for the following reasons:

a. Because peace officers are given the primary responsibility for law enforcement, they act and are viewed by the public as the tools and symbol of law enforcement and respect for the law. A peace officer who commits a felonious act diminishes his own credibility and effectiveness and reflects badly on the entire profession. This rule is, therefore, necessary to act as a deterrent to the commission of a felony by the threat of licensure sanctions and to demonstrate to the public that the commission of felonious acts by peace officers, whether criminal charges ever result or not, will not be tolerated by the profession.

b. By using the commission of a felonious act as a violation of a standard of conduct, it is recognized that the

proscription is against those actions which our laws have recognized to be the most serious of all offenses. While certainly not condoning such conduct, it must be recognized that a peace officer might commit minor offenses which are not so serious as to require disciplinary action. Therefore, use of the term felony, as defined by Minn. Stat. § 609.02, Subd. 2 (1978), is reasonable and necessary.

c. Use of the commission of a felony preserves the ability of the Board to make an independent determination as to whether a peace officer has committed a felonious act. The necessity of a conviction for or a charge of committing a felonious act would be unreasonable. Many felonies are committed which never result in felony convictions or even result in the filing of criminal charges. The Board has no control over decisions of the criminal justice system, and to rely upon the discretion of a prosecutor to charge or a judge and jury to convict would be an unreasonable and unnecessary limitation on the Board's authority.

d. By including in this rule acts which were committed outside Minnesota but which would have been felonies if committed in Minnesota, it is guaranteed that all peace officers will be treated equally. Because the various jurisdictions treat many offenses with varying degrees of severity, a contrary rule might make the key factor the jurisdiction in which an offense was committed. However, the true importance of the offense is the act itself and not where it occurred. Therefore, this rule is a reasonable and necessary way to insure equal treatment for all peace officers.

2. Minn. Stat. § 609.066 (1978) defines the privilege held by peace officers to use deadly force. The statute clearly sets forth the definition of deadly force and states when it may be used. Our laws and society have made clear that the use of deadly force when not authorized by this section is to be prohibited. Because peace officers are more likely than other members of society to become involved in the use of deadly force, they must be held to a particularly high standard of care and conduct. By prohibiting the use of deadly force when not authorized by statute, this rule provides a reasonable and necessary deterrent to unauthorized use of deadly force.

3. The Board is empowered and required by law to regulate and license the conduct and activities of peace officers. To do this effectively, it must be able to obtain honest answers and factually correct information. Our laws have long recognized the need of fact-finding bodies to get honest information and has provided severe sanctions for those who would lie under oath. Minn. Stat. § 609.48 (1978). This rule is reasonable and necessary to insure that those who provide statements to the Board under oath are being honest and truthful.

4. Minn. Stat. § 626.845, Subd. 1 (d) (1978), empowers the Board to license peace officers. Pursuant to that authority, the Board has adopted 4 MCAR § 13.006. To insure applications for new licenses and renewal of licenses as factually true and correct and thereby maintain the integrity of the licensing process, it is necessary and reasonable to have a sanction against those who provide the Board with materially false information.

5. Minn. Stat. § 214.12 (1978) empowers the Board to create continuing education requirements by virtue of its authority as a nonhealth licensing board, as defined by Minn. Stat. § 214.01, Subd. 3 (1978). Pursuant to that authority, the Board has adopted 4 MCAR § 13.008. This rule provides the sanction to insure compliance with 4 MCAR § 13.008 and is a reasonable and necessary way to insure that the minimum requirements of continuing education are met.

6. Minn. Stat. § 214.06 (1978) empowers the Board to impose licensing fees and to establish rules in that regard. Pursuant to that authority, a license fee of ten dollars for a three-year period has been established in 4 MCAR § 13.007. This minimal fee is used to help meet the ordinary and necessary expenses of the Board. This rule is a reasonable and necessary sanction to help insure payment of this fee and the Board's continued viability.

7. Pursuant to its statutory authority in Minn. Stat. §§ 626.84 - 626.855 (1978) and Minn. Stat. ch. 214 (1978), the Board has established a comprehensive system of rules found in 4 MCAR §§ 13.001 - 13.020. If such rules are to be preserved and complied with, there must be a sanction for noncompliance. This rule provides a reasonable and necessary sanction to insure compliance by licensed peace officers with 4 MCAR §§ 13.001 - 13.020.

8. Minn. Stat. § 626.842, Subd. 2 (1978), states the investigation and processing of complaints by the Board shall be pursuant to Minn. Stat. ch. 214. Minn. Stat. §§ 214.10 and 214.11 (1978) detail the procedures to be used in the investigation, processing and hearing of complaints. This rule provides a reasonable and necessary procedure to insure that peace officers conform to minimum standards of conduct while preserving the rights of the peace officers and the public.