

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
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DMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ARTHUR E. NOOT
Commissioner of Public Welfare

DATE: May 2, 1980

Attn: Alberto Quintela, Jr.
Legal Assistant

FROM : JOANNE E. HINDERAKER JEH
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: Rules as Approved In the Matter of the Proposed Amendments of Rules of the Minnesota Merit System Governing Definitions and Positions Covered by the Rules (12 MCAR § 2.490 and 2.491)

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

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

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

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

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

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

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

JEH/bw
Enclosure
cc: Duane Harves
Susan Robertson

Our File #589
Jeannie

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 4/17 DUE DATE 5/7

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved 5/1 Date Sent Back to Agency 5/2

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1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓ 2.11.80
   Sufficiency ✓
   Correction to Notice of Hearing ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
   " for Correction Mailing ✓
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓
   Correction Mailing ✓ ✓
10. Publication in State Register ✓
    At least 30 days prior to hearing ✓
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ? could be taken as being incorporated into #15 - Order Adopting, but is not labelled as such. O.K. one Findings incorp. into Order
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓ for temporary version of same or similar rule
20. Petition by Public, where applicable N/A

Exhibit C

Rule Amendments as Adopted

12 MCAR § 2.490 Definitions

A. The following definitions apply throughout these rules, unless the context clearly requires another meaning.

2. "Appointing authority" means the county board, county welfare board, human service board or officer authorized by statute or lawfully delegated authority to make appointments to positions under the Merit System.

3. "Board" means the county board, county welfare board, or human service board.

7. "County agency" means the organization created by the county board, county welfare board or the human service board to carry out the functions and policies of the board with regard to community social service or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration.

15. "Employee" means any person in the employ of a county board, county welfare board, or human services board, exclusive of its members, who occupies a position covered by these rules and who is paid a salary or wage.

43. "County welfare board" means the county welfare board, county board or human service board.

Rule Amendments As Adopted

12 MCAR § 2.491 Statement of Policy and Means of Effecting Policy

D. Positions Covered by These Rules

1. These rules shall apply to all positions and employees in these positions engaged in the administration of community social service or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel management under the jurisdiction of appointing authorities except duly appointed or elected members of these boards, all employees of institutions, sanatoria and hospitals under the jurisdiction of such boards, and the director of community social services. These rules shall be applicable to such positions until such time as the counties adopt and maintain rules and regulations affecting classification and compensation, examination, and certification of eligibles and other personnel standards acceptable to the Commissioner.

APPROVED AS TO FORM AND LEGALITY

MAY 0 1 1980 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Joanne Hinderaker

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY - 1 1980
Joan Anderson Growe
Secretary of State
10:15 AM

copy

DPW-80-027-HC

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING DEFINITIONS AND POSITIONS COVERED BY THE RULES. (12 MCAR §§ 2.490 and 2.491)

ORDER ADOPTING RULES

The above entitled matter was heard before Harry Seymore Crump, Hearing Examiner from the State Office of Hearing Examiners on February 11, 1980, at 9:30 a.m. in Room A of the Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota.

Proper notice required by Minn. Stat. § 15.0412 (1978) was served upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose.

At said hearing, proposed amendments to the above-captioned rules were considered as originally proposed as shown in Exhibit A attached hereto. Mr. Ralph Corey, Supervisor of the Minnesota Merit System, made the agency presentation at the hearing. The hearing continued until all interested persons and groups had an opportunity to be heard. Based upon all the records and proceedings the Examiner issued a Report of Hearing Examiner, dated March 21, 1980, a copy of which is attached hereto as Exhibit B. The Examiner's Report contained findings of fact, conclusions and a recommendation.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), the Examiner's Report has been available to all affected persons for over five days subsequent to the date of the Report.

After affording interested persons an opportunity to present written and/or oral statements, having reviewed all of the testimony, having considered all of the evidence adduced, having considered the Report of the Hearing Examiner, and upon all of the proceedings herein, applicable statutory standards and criteria, and having determined the need for and reasonableness of the above-captioned rules,

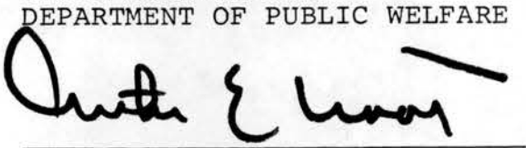
NOW THEREFORE IT IS ORDERED THAT the Commissioner hereby adopts and incorporates herein the Report of Hearing Examiner, dated March 21, 1980, except that part of the Hearing Examiner's Finding of Fact numbered 18 and appearing on page 5 which states,

> Furthermore, it would be helpful to the public to include herein a list of cross-references to the existing rule dealing with appointing authorities where this proposed rule provision is applicable.

IT IS FURTHER ORDERED THAT the above-captioned rules from and after this date of April 3, 1980, shall read in their entirety as set forth in the attached Exhibit C.

Dated: April 3, 1980.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE



ARTHUR E. NOOT
Commissioner

Exhibit C

Rule Amendments As Proposed

12 MCAR § 2.491 Statement of Policy and Means of Effecting Policy

D. Positions Covered by These Rules

1. These rules shall apply to all positions and employees in these positions engaged in the administration of community social service or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel management under the jurisdiction of appointing authorities except duly appointed or elected members of these boards, all employees of institutions, sanatoria and hospitals under the jurisdiction of such boards, and the director of community social services. These rules shall be applicable to such positions until such time as the counties adopt and maintain rules and regulations affecting classification and compensation, examination, and certification of eligibles and other personnel standards acceptable to the Commissioner.

Rule Amendments As Proposed

12 MCAR § 2.490 Definitions

A. The following definitions apply throughout these rules, unless the context clearly requires another meaning.

2. "Appointing authority" means the county board, county welfare board, human service board or officer authorized by statute or lawfully delegated authority to make appointments to positions under the Merit System.

3. "Board" means the county board, county welfare board, or human service board.

7. "County agency" means the organization created by the county board, county welfare board or the human service board to carry out the functions and policies of the board with regard to community social service or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration.

15. "Employee" means any person in the employ of a county board, county welfare board, or human services board, exclusive of its members, who occupies a position covered by these rules and who is paid a salary or wage.

43. "County welfare board" means the county welfare board, county board or human service board.

12 MCAR § 2.491 Statement of Policy and Means of Effecting Policy

D. Positions Covered by These Rules

1. These rules shall apply to all positions ~~created~~ and employees in these positions engaged in the administration of community social service or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel management under the jurisdiction of ~~the Minnesota county welfare boards~~ appointing authorities except duly appointed or elected members of these boards, ~~and~~ all employees of institutions, sanatoria and hospitals under the jurisdiction of ~~county welfare~~ such boards, and the director of community social services. These rules shall be applicable to such positions until such time as the counties adopt and maintain rules and regulations affecting classification and compensation, examination, and certification of eligibles and other personnel standards acceptable to the Commissioner.

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING DEFINITIONS AND POSITIONS COVERED BY THE RULES (12 MCAR § 2.490 and 2.491)

CORRECTION IN NOTICE OF HEARING

The Notice of Hearing concerning the above entitled matter mailed on January 7, 1980 erred in giving the date of the hearing as February 11, 1979. The correct date is February 11, 1980.

Arthur E. Noot
Commissioner of Public Welfare

Dated: January 11, 1980

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING DEFINITIONS AND POSITIONS COVERED BY THE RULES (12 MCAR § 2.490 and 2.491)

NOTICE OF HEARING

A public hearing concerning the above-entitled matter will be held at the Centennial Office Building, Fourth Floor, Room A, 658 Cedar Street, St. Paul, Minnesota 55155 on February 11, 1979 commencing at 9:30 a.m. The rule amendments may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the rule amendments, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to the Hearing Examiner, Howard Kaibel, 1745 University Avenue, St. Paul, MN 55104, (612) 296-8107, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that twenty-five 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 gives evidence justifying both the need for and reasonableness for the proposed rule. The agency intends to present only a short summary of the Statement of Need and Reasonableness at the hearing but will answer questions raised by interested persons. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimum charge.

12 MCAR § 2.490 contains definitions used in the Minnesota Merit System Rules. Proposed amendments to 12 MCAR § 2.490 will alter the definitions of "appointing authority" and "board" to include county boards. "County agency" will be redefined to include an organization created by the county board. "Employee" will be redefined to include a person in the employ of the county board. A new definition, "county welfare board," will define it to include the county board and human service board as well as the county welfare board.

12 MCAR § 2.491 D. delineates the positions and employees to which the Merit System Rules apply. The proposed amendment to 12 MCAR § 2.491 D. 1. will apply the Merit System Rules to all positions and employees engaged in the administration of community social service or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system under the jurisdiction of appointing authorities except for certain statutory exclusions which include the director of community social service.

The agency's authority to adopt the proposed rule is contained in the Community Social Services Act, Laws of 1979, Chapter 324 § 5, Minn. Stat. § 256E.05; Minn. Stat. § 256.01, Subd. 4(3); and Minn. Stat. § 393.07, Subd. 5.

There will be no cost to local public bodies in the State to implement the proposed rule amendments for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, Subd. 7 (1978).

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Ralph W. Corey, Merit System Supervisor, Department of Public Welfare, Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155, telephone (612) 296-3996. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule amendments, contact Ralph Corey.

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.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as any individual:

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

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

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Dated: December 17, 1979

Arthur E. Noot
Commissioner of Public Welfare

DPW-80-027-HC

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA MERIT SYSTEM

In the Matter of the Proposed Amendments of Rules of the Minnesota Merit System Governing Definitions and Positions Covered by the Rules. (12 MCAR §§ 2.490 and 2.491)

REPORT OF THE HEARING EXAMINER

The above-entitled matter was heard before Harry Seymour Crump, Hearing Examiner from the State Office of Hearing Examiners, on February 11, 1980, at 9:30 a.m. in Room A of the Centennial Office Building, 658 Cedar Street, in the City of Saint Paul, County of Ramsey, State of Minnesota.

The agency panel consisted of the following: James Jorgensen, Special Assistant Attorney General assigned to the Department of Public Welfare, appeared on behalf of the Minnesota Merit System; Betty Carlson, Senior Personnel Representative, Merit System; Dudley Younkin, staff member of the Merit System; Ralph Corey, Merit System Supervisor, testified on behalf of the Merit System; Dan Gustafson, Chairman of the Merit System and Vondel Holbert, a member of the Merit System Council. (Minnesota Merit System is a collective title for the programs implementing statewide merit systems within the individual agencies of the Department of Public Welfare, Health and Public Safety.)

One person attended the hearing. One person outside of the Merit System signed the register. No one spoke other than the Merit System Supervisor, Mr. Corey. The hearing continued until all interested persons or groups were given the opportunity to be heard.

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

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five days. Thereafter, the Minnesota Merit System 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. § 15.052, subd. 4 (1978). 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 Minnesota Merit System on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 (1978) within

ten calendar days. The Minnesota Merity System 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.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On December 19, 1979, the Minnesota Merit System filed the following documents with the Chief Hearing Examiner:

(a) Order for Hearing as proposed to be issued.
(b) Notice of Hearing as proposed to be issued.
(c) A copy of the Rule Amendments as proposed.

2. On January 7, 1980, the Notice of Hearing and a copy of the proposed rule amendments were published at 4 State Register 1095.

3. On January 7, 1980, the Minnesota Merit System mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State's Office for the purpose of receiving such notice. On January 11, 1980, a correction in the Notice of Hearing was mailed to those receiving the original Notice of Hearing.

4. On January 15, 1980, the Minnesota Merit System filed the following documents:

(a) Order for Hearing.
(b) Notice of Hearing.
(c) Correction in Notice of Hearing.
(d) Affidavit of Mailing of correction in Notice of Hearing.
(e) Correction in Notice of Hearing.
(f) Rule Amendments as Proposed.
(g) The name of the persons who would represent the Merit System at the hearing.
(h) A Certificate of Delivery of the Secretary of State's list dated January 4, 1980.
(i) A Certificate of Delivery of the Secretary of State's list dated January 11, 1980.
(j) Affidavit of Receipt of the Secretary of State's list.
(k) Affidavit of Mailing dated January 7, 1980.
(l) Affidavit of Additional Mailing dated January 7, 1980.
(m) The Statement of Need and Reasonableness.

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

5. The record remained open through February 21, 1980, for receipt of written comments. No prehearing comments were received. One post-hearing comment from the counsel for the Merit System was received.

Statutory Authority

6. The Minnesota Merit System bases its authority to adopt these amendments on Minn. Stat. §§ 256.01, subd. 4, and 393.07, subd. 5.

7. Minn. Stat. § 256.01, subd. 4, clause 3 provides that the state agency shall "establish adequate standards for personnel employed by the counties and the state agency in the administration of Laws 1937, Chapter 438, and make the necessary rules and regulations to maintain such standards".

Minn. Stat. § 393.07, subd. 5 provides that:

> The commissioner of public welfare shall have authority to require such methods of administration as are necessary for compliance with requirements of the federal social security act, as amended, and for the proper and efficient operation of all welfare programs. This authority to require methods of administration includes methods relating to the establishment and maintenance of personnel standards on a merit basis as concerns all employees of county welfare boards except those employed in an institution, sanatorium, or hospital. . . .

Furthermore, Minn. Stat. § 375.62 makes express reference to the fact that under Minn. Stat. § 393.07, subd. 5, rules and regulations may be promulgated.

8. Under Minn. Stat. § 393.07, subd. 3, the Commissioner of Public Welfare also has the general authority to promulgate rules and regulations to "comply with the requirements of the federal social security act needed to qualify the state to obtain grants-in-aid available under that act".

9. Pursuant to such statutory authority, the Department of Public Welfare has adopted comprehensive administrative rules which regulate and govern the administration of the Minnesota Merit System. See, 12 MCAR §§ 2.490-2.841.

10. Furthermore, the Minnesota Supreme Court has recognized the authority of the Department of Public Welfare wherein it stated the proper construction of state and federal laws concerning social security provided that the "Director of Social Welfare (the former title of the Commissioner of Public Welfare) shall have authority to adopt rules and regulations with respect to the selection; tenure of office and compensation of personnel. . . ." State v. Fitzsimmons, 239 Minn. 407, 420, 58 N.W.2d 882, 890 (1953).

Need and Reasonableness

11. The proposed rule amendments were promulgated in accordance with the provisions of applicable Minnesota Statutes and protect and guarantee the rights of public employers and Minnesota Merit System employees in conformance with the terms of the State's Public Employment Labor Relation Act codified at Minn. Stat. §§ 179.61 - 179.76.

12. In 1979, the Minnesota Legislature enacted the Community Social Services Act (CSSA). See, Minn. Laws 1979, Ch. 324, 871 (Act). Sections 1-12 of the Act, currently found at Minn. Stat. §§ 256E.01 - 256E.12, changed the appointing authority of some, or at the option of the county board, all of the county welfare board employees from the welfare board to the county board. The affected employees are engaged in administering federal grant-in-aid programs which require a merit system of personnel administration. Failure of the Minnesota Merit System, a federally appointed merit system, to cover the employees transferred to the jurisdiction of the county board would be considered non-compliance with the federal standards and requirements of merit systems and could lead to the loss of federal grants-in-aid.

13. Therefore, it is reasonable to revise the Minnesota Merit System rules to include employees of county board engaged in the administration of federal grant-in-aid programs in order to guarantee compliance with the requirements of federal grant-in-aid standards. Further, the CSSA mandates such amendments. This act provides that the "commissioner shall also. . . revise

all applicable department rules as appropriate to accommodate Sections 1 to 12" of the Act. See, Minn. Laws 1979, Ch. 324, § 5(3)(b), 871, 873.

Proposed Rule Amendment 12 MCAR § 2.490

14. 12 MCAR § 2.490 deals with definitions as used in the Minnesota Merit System rules. The proposed amendments concern the scope and coverage of these definitions. The first two proposed amendments to 12 MCAR § 2.490 add the words "county board" to the definitions of "appointing authority" and "board". The federal government clearly requires county welfare employees to be under a federally approved merit system as a mandatory condition of continued federal financial participation in both welfare programmatic costs and costs of administration. The CSSA changed employers of county welfare employees from the county welfare board to the county board. The Merit System rules do not cover county board employees performing welfare functions. These amendments are needed in light of the need to continue coverage of employees by an approved merit system which is the condition of continued receipt of federal welfare monies. They are reasonable in view of the passage of CSSA changing employer from the county welfare board to the county boards.

The Hearing Examiner finds that these two amendments, as proposed, are needed and reasonable.

15. The first proposed amendment of the definition of "county agency" to include "county board" is also based on a need for continued coverage of employees by an approved merit system and is a reasonable addition to the definition of "county agency" designed to meet this need.

The Hearing Examiner finds that this amendment, as proposed, is needed and reasonable.

16. The second amendment to the definition of "county agency" identifies those programs involving federal grants-in-aid for welfare programs as distinguished from other county programs such as highway programs, the auditor's and treasurer's function and others where such grants are not involved. It is needed in order to limit and define Merit System program coverage and reasonably defines those kinds of welfare programs that are wholly or partially funded by grants-in-aid requiring a merit system of personnel administration and is a reasonable addition designed to meet this need.

The Hearing Examiner finds that this amendment, as proposed, is needed and reasonable.

17. The first amendment to the definition of "employee" to include "county board" is also based on the same need and reasonableness as those amendments proposed for the definitions of "appointing authority" and "board". The second amendment to this definition is needed to limit coverage by the Minnesota Merit System to employees who are engaged in the administration of community social service or income maintenance programs and is reasonable in accomplishing that result.

The Hearing Examiner finds that these amendments, as proposed, are needed and reasonable.

18. The last amendment proposed for 12 MCAR § 2.490 is a new definition which defines the term "county welfare board" to include the county welfare

board, county board and human service board. As new and amended rules have been adopted the generic term "appointing authority" has been substituted for "county welfare board" in the Merit System rules, but there remain, however, many references to "county welfare boards". This amendment is needed to assure that those portions of the rules using "county welfare board" apply to human service boards and county boards where they are the appointing authority. It is reasonable in that it makes the rules applicable to all appointing authorities whether this be a county board, county welfare board of human service board.

The Hearing Examiner finds that this amendment, as proposed, is needed and reasonable. Furthermore, it would be helpful to the public to include herein a list of cross-references to the existing rule dealing with appointing authorities where this proposed rule provision is applicable.

suggestion not complied with — See 2.11.80 letter — JJ to HC.

Proposed Rule Amendment 12 MCAR § 2.491

19. This rule deals with the statement of policy and the means of effecting policy. Part of 12 MCAR § 2.491 D.1. being amended concern the employment positions covered by these rules. The first amendment to this rule merely clarifies that employees and employment positions which engage in the administration of certain programs funded by federal grants-in-aid requiring a merit system are covered by the rules. The second amendment to this rule is needed to substitute the more general term of appointing authority for the specfic reference to Minnesota county welfare boards so that former employees of county welfare boards, who are now employed by county boards, are covered under the rules. Likewise, it is needed to define the scope of Merit System coverage as being limited to positions and employees engaged in the administration of welfare programs.

The Hearing Examiner finds that these amendments, as proposed, are needed and reasonable.

20. The third amendment is needed to clarify the fact that elected members as well as appointed members of county boards, county welfare boards or human service boards are not covered by the rules. The last amendment proposed to this rule specifically exempts the position of director of community social services from the rules. The Community Social Services Act provides that this person shall serve at the pleasure of the board (Minn. Laws 1979, Ch. 324, § 8, 871, 877, current version at Minn. Stat. § 256E.08, subd. 2 (Supp. 1979)). The amendment above is needed in order that the rules be in conformity with the cited provision of the act.

The Hearing Examiner finds that these amendments, as proposed, are needed and reasonable.

21. Any Findings herein which may be termed as Conclusions are hereby adopted as such.

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

CONCLUSIONS

1. The Minnesota Merit System gave proper notice of the promulgation of the proposed rule provisions.

2. The Merit System has statutory authority, as cited, to take the action proposed, to wit, the promulgation, deletion and amendment of the proposed rules.

3. The Merit System has fulfilled all relevant substantive and procedural requirements of law or rule.

4. The Merit System has demonstrated the need for and reasonableness of the proposed rules and proposed amendments and deletions 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 proposed amendments be adopted by the Minnesota Merit System as recommended by the Hearing Examiner.

Dated: March 21 1980.

HARRY SEYMOUR CRUMP
Hearing Examiner

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

TELEPHONE
(612) 296-6196

February 15, 1980

Harry S. Crump
Office of Hearing Examiners
Room 300
1745 University Avenue
St. Paul, Minnesota 55104

RE: 12 M.C.A.R. §§ 2.490a and 2.491a

Dear Mr. Crump:

This letter is in response to your February 11, 1980 request that the Merit System further explain the effect of the definition of "County Welfare Board" (12 M.C.A.R. § 2.490a.A.43) upon other Merit System Rules. As was pointed out during the hearing, several existing Merit System rules contain the term "County Welfare Board." In addition to the specific rules enumerated to you during the hearing, you should also be aware that the term "County Welfare Board" appears numerous places throughout the individual job classification rules of the Merit System.

During our telephone conversation following the rule hearing, we discussed the fact that the proposed amendment in issue brings the Merit System into conformity with the recent Community Social Services Act ("CSSA") while minimizing expense and time expenditures by both Merit System personnel, Attorney General personnel and hearing examiner personnel. The proposed amendment also complies with rule making requirements of Minn. Stat. Chap. 15 (1978) and provides the public with notice of the scope and effect of Merit System rules. See, Monk & Excelsior, Inc. v. Minnesota State Bd. of Health, 302 Minn. 502, 225 N.W.2d 821 (1975) ("Monk") which stands for the general proposition that a person dealing with an agency is entitled to notice of what regulations are being promulgated and are applicable to him. The proposed definition of "Welfare Board" clearly conforms to the requirement of Monk by clearly stating the exact definition and scope of the term "Welfare Board."

As was pointed out during the hearing and confirmed during our telephone conversation, the definition of "County Welfare Board" is an expedient, reasonable and temporary solution to the problem of bringing the Merit System rules into conformity with "CSSA." The Merit System fully intends to continue its approach, already reflected in several previous rule hearings, of substituting the term "appointing authority" for "County Welfare Board" as each individual rule utilizing that term is substantively amended. That means that as each classification rule or general rule is amended, along with the substantive

amendments, the term "appointing authority" will be substituted for "County Welfare Board."

It is the Merit System's position that the proposed amendment is both reasonable and fully complies with legal rule-making requirements. The Attorney General's Office has already decided that the temporary rules, which include the definition in issue, fulfill legal requirements. See, Statement of Need and Reasonableness submitted for the present hearing.

In conclusion, to require each rule containing the term "County Welfare Board" to be republished and repromulgated simply to make the definition effective, seems highly unreasonable as it would not change any language of the rules (other than the one definitional rule) and would require a wasteful and unnecessary expenditure of state monies and time.

If you require anything in addition to the above, or if this letter has misinterpreted or is non-responsive to your question, please contact me.

Respectfully,

James A. Jorgensen

JAMES A. JORGENSEN
Special Assistant
Attorney General

4th Floor, Centennial Office Bldg.
St. Paul, Minnesota 55155
Telephone: 296-8404

JAJ/klm

public meeting shall be conducted no later than 45 days after the stipulation is received by the commission.

F. Hearing. The petition shall be assigned to the Minnesota Office of Hearing Examiners for contested case hearing if:

1. Either company files with the tariff a notice of objection to the installation or removal of Extended Area Service as requested by the petition; or

2. Ten percent or more of the customers or 100 customers, whichever is less, in either exchange file a notice of objection with the commission or appear at the public meeting and give notice of their objection to the installation or removal of Extended Area Service as sought in the petition.

The staff of the Department of Public Service and the telephone companies shall establish a record before the hearing examiner which includes the information required under the stipulation of facts. The record may be established by a stipulation of facts or by testimony and exhibits containing the necessary information. Comments mailed to the hearing examiner shall become part of the record.

G. Notice. In addition to notice required by statute or the rules of the Office of Hearing Examiners, the telephone companies serving the exchanges shall give notice of the public meeting or hearing to all customers in the affected exchanges by billing insert, and publication in the legal newspapers of the county seat towns in the counties in which the exchanges involved are located. The customers shall be given a minimum of 10 days notice of the public meeting or hearing. The notice shall contain an explanation of the proposed installation or removal plan, the proposed rate, the time, date and location of the public information meeting or hearing, statement that comments may be sent by mail to the Public Service Commission or the hearing examiner, and the address of the Public Service Commission or Office of Hearing Examiners.

H. Final order of the commission.

1. If a contested case hearing is not necessary, the final order of the commission shall be issued within 30 days of the public meeting.

2. If a contested case hearing is held, a final order of the commission is due 120 days after the order for hearing is served on the hearing examiner.

3. The commission shall order the installation or removal of Extended Area Service if it finds that such an action is required by the public convenience.

I. Repetitioning. The commission shall not order the removal of Extended Area Service within five years of installation.

Department of Public Welfare
Executive Division

Proposed Amendments to Rule Governing Minnesota Merit System

Notice of Hearing

A public hearing concerning the above-entitled matter will be held at the Centennial Office Building, Fourth Floor, Room A, 658 Cedar Street, St. Paul, Minnesota 55155 on February 11, 1980 commencing at 9:30 a.m. The rule amendments may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the rule amendments, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to the Hearing Examiner, Howard Kaibel, 1745 University Ave., St. Paul, Mn. 55104, (612) 296-8107, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that twenty-five 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 gives evidence justifying both the need for and reasonableness for the proposed rule. The agency intends to present only a short summary of the Statement of Need and Reasonableness at the hearing but will answer questions raised by interested persons. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimum charge.

12 MCAR § 2.490 contains definitions used in the Minnesota Merit System Rules. Proposed amendments to 12 MCAR § 2.490 will alter the definitions of "appointing authority" and "board" to include county boards. "County agency" will be

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."

redefined to include an organization created by the county board. "Employee" will be redefined to include a person in the employ of the county board. A new definition, "county welfare board," will define it to include the county board and human service board as well as the county welfare board.

12 MCAR § 2.491 D. delineates the positions and employees to which the Merit System Rules apply. The proposed amendment to 12 MCAR § 2.491 D.1. will apply the Merit System Rules to all positions and employees engaged in the administration of community social service or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system under the jurisdiction of appointing authorities except for certain statutory exclusions which include the director of community social service.

The agency's authority to adopt the proposed rule is contained in the Community Social Services Act, Laws of 1979, ch. 324 § 5, Minn. Stat. § 256E.05; Minn. Stat. § 256.01, subd. 4 (3); and Minn. Stat. § 393.07, subd. 5.

There will be no cost to local public bodies in the state to implement the proposed rule amendments for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Ralph W. Corey, Merit System Supervisor, Department of Public Welfare, Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155, telephone (612) 296-3996. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule amendments contact Ralph Corey.

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.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* 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; 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.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, telephone (612) 296-5615.

Arthur E. Noot
Commissioner of Public Welfare

Amendments as Proposed

12 MCAR § 2.490 Definitions.

A.2. "Appointing authority" means the county board, county welfare board, human service board or officer authorized by statute or lawfully delegated authority to make appointments to positions under the Merit System.

3. "Board" means the county board, county welfare board, or human service board.

7. "County agency" means the organization created by the county board, county welfare board or the human service board to carry out the functions and policies of the board with regard to community social service or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration.

15. "Employee" means any person in the employ of a county board, county welfare board, or human services board, exclusive of its members, who occupies a position covered by these rules and who is paid a salary or wage.

43. "County welfare board" means the county welfare board, county board or human service board.

12 MCAR § 2.491 D. Positions covered by these rules.

1. These rules shall apply to all positions ~~created~~ and employees in these positions engaged in the administration of community social service or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel management under the jurisdiction of ~~the Minnesota county welfare boards~~ appointing authorities except duly appointed or elected members of these boards, ~~and~~ all employees of institutions, sanatoria and hospitals under the jurisdiction of ~~county welfare~~ such boards, and the director of community social services. These rules shall be applicable to such positions until such time as the counties adopt and maintain rules and regulations affecting classification and compensation, examination, and certification of eligibles and other personnel standards acceptable to the commissioner.

Department of Public Welfare

Proposed Temporary Rules Governing the Minnesota Merit System

Request for Public Comment

Notice is hereby given that the Department of Public Welfare has proposed the following temporary rules amending current rules 12 MCAR § 2.490 and 12 MCAR § 2.491 for the purpose of implementing the provisions of Laws of 1979, ch. 324, § 5, pertaining to the Community Social Services Act. The proposed temporary rules shall be designated 12 MCAR § 2.490a and 12 MCAR § 2.49~~1~~a."

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the *State Register* by writing to Ralph Corey, Minnesota Merit System, Department of Public Welfare, 4th Floor, Centennial Office Building, Saint Paul, Minnesota, 55155. The temporary rule may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the temporary rule.

October 23, 1979

Arthur E. Noot
Commissioner of Public Welfare

12 MCAR § 2.490a Definitions.

A. The following definitons apply throughout these rules, unless the context clearly requires another meaning.

A.2. "Appointing authority" means the county board, county welfare board, human service board or officer authorized by statute or lawfully delegated authority to make appointments to positions under the Merit System.

A.3. "Board" means the county board, county welfare board, or human service board.

A.7. "County agency" means the organization created by the county board, county welfare board or the human service board to carry out the functions and policies of the board with regard to community social service or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration.

A.15. "Employee" means any person in the employ of a county board, county welfare board, or human services board, exclusive of its members, who occupies a position covered by these rules and who is paid a salary or wage.

A.43. "County welfare board" means the county welfare board, county board or human service board.

12 MCAR § 2.491a Statement of policy and means of effecting policy.

D. Positions covered by these rules.

1. These rules shall apply to all positions ~~created~~ and employees in these positions under the jurisdiction of ~~the Minnesota county welfare boards~~ appointing authorities engaged in the administration of community social service or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel management except duly appointed or elected members of these boards, ~~and~~ all employees of institutions, sanatoria, and hospitals under the jurisdiction of ~~county welfare~~ such boards, and the director of community social services. These rules shall be applicable to such positions until such time as the counties adopt and maintain rules and regulations affecting classification and compensation, examination, and certification of eligibles and other personnel standards acceptable to the Commissioner.

Department of Public Welfare
Social Services Division

Proposed Amendment of Foster Care for Children Rule and Proposed Adoption of a New Child Protective Services Rule

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4, in the Centennial Office Building, Room A, Fourth Floor, 658 Cedar Street, St. Paul, Minnesota on December 13, 1979 commencing at 9:00 a.m.

All interested or affected persons will have an opportunity to participate concerning the rules captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to George Beck, Hearing Examiner, Office of Hearing Examiners, 1745 University Ave., St. Paul, Minnesota 55104 (612) 296-8108, either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner may keep the record open for a longer period not to exceed 20

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."

STATEMENT OF COMPLIANCE WITH
MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General James A. Jorgensen, 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.

James A. Jorgensen

JAMES A. JORGENSEN
Special Assistant Attorney General

Dated: April 17, 1980

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF HEARING EXAMINERS

Office Memorandum

TO : JAMES JORGENSEN
Special Assistant Attorney General

DATE: April 10, 1980

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 6-8100

SUBJECT: RULES - MERIT SYSTEM - DPW-80-027-HC

Enclosed is the Order of the Chief Hearing Examiner on the issue of substantial change in the above-referenced matter.

sh
Enc.
cc: Alberto Quintela, Jr.
Legal Assistant

RECEIVED

APR 14 1980

ATTORNEY GENERALS OFFICE
WELFARE DIVISION

DPW-80-027-HC

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA MERIT SYSTEM

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING DEFINITIONS AND POSITIONS COVERED BY THE RULES. (12 MCAR §§ 2.490 AND 2.491)

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on February 11, 1980, before Harry Seymour Crump, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of the Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Minnesota Merit System on March 21, 1980; and

WHEREAS, the Minnesota Merit System has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

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

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Minnesota Merit System has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Order, the Minnesota Merit System has the responsibility of submitting the complete hearing record and the rules as adopted by the System to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 10th day
of April, 1980.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ARTHUR E. NOOT
COMMISSIONER OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENTS
OF RULES OF THE MINNESOTA MERIT SYSTEM
GOVERNING DEFINITIONS AND POSITIONS
COVERED BY THE RULES (12 MCAR §§ 2.490 - 2.491)

STATEMENT OF NEED
AND REASONABLENESS

I

The following statutes and regulations constitute the statutory and regulatory authority upon which the above-cited rule amendments are based:

1. Federal law requires that in order for Minnesota to be eligible to receive federal grant-in-aid funds for its various public welfare programs, it must establish and maintain a merit system for personnel administration. See, e.g. 42 USC Ch. 62.[1/]

1/ Also see sections of the United States Code cited hereinafter where the following programs have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis:

Aid to Families With Dependent Children - "AFDC" [42 USC § 602 (a) (5)]
Food Stamps [7 USC § 2020 (e) (6) (B)]
Medical Assistance - "MA" [42 USC § 1396a (a) (4) (A)]
Social Services [42 USC § 1397b (d) (1) (D)]
Comprehensive Mental Health Services [42 USC § 2689 (a) (1) (D)]
Aid to the Blind [42 USC § 1202 (a) (5) (A)]
Aid to the Permanently and Totally Disabled [42 USC § 1352 (a) (5) (A)]
Aid to the Aged, Blind or Disabled [42 USC § 1382 (a) (5) (A)]
Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation [42 USC § 4573 (a) (5)]
Drug Abuse Prevention [21 USC § 1176 (e) (8)]
Maternal and Child Health Services/Crippled Children Services [42 USC § 705 (a) (3) (A)]

2. Pursuant to such congressional action the Office of Personnel Management, acting under authority transferred to the United States Civil Service Commission from the Departments of Health, Education and Welfare, Labor, and Agriculture by the Intergovernmental Personnel Act (IPA) of 1970 and subsequently transferred to January 1, 1979, to the Office of Personnel Management by the Reorganization Plan Number Two of 1978, promulgated the Standards for a Merit System of Personnel Administration, 5 CFR Part 900, Subpart F, 44FR 10238, February 16, 1979, which imposes on the State of Minnesota general requirements for a merit system of personnel administration in the administration of the federal grant-in-aid programs (See, Footnote 1 Supra.)

3. Under the aforementioned grant-in-aid programs the State of Minnesota, through its appropriate agencies, is the grantee of federal program and administrative funds and, accordingly, the State is under an affirmative obligation to insure that such monties are properly and efficiently expended in compliance with the applicable federal standards. Those standards require that in order for the agencies under the Minnesota Merit System to be eligible to receive federal grant-in-aid funds the Minnesota Merit System rules must specifically include, among other things, an active recruitment, selection and appointment program (5 CFR 900.602 - 900.603), current classification and compensation plans (5 CFR 900.604), training (5 CFR 900.605), retention on the basis of performance (5 CFR 900.606); and fair, non-discriminatory treatment of applicants and employees with due regard to their privacy and constitutional rights (5 CFR 900.607).

4. To implement compliance with the federal merit system requirements the Minnesota Legislature has enacted the following provisions:

Minn. Stat. § 256.01 subd. 4.

> The State agency shall:
>
> (3) Establish adequate standards for personnel employed by the counties and the State agency...and make the necessary rules and regulations to maintain such standards.

Minn. Stat. 393.07 subd. 5 Compliance with Federal Social Security Act; Merit System

> The Commissioner of Public Welfare shall have authority to require such methods of administration as are necessary for compliance with requirements of the federal social security act, as amended, and for the proper and efficient operation of all welfare programs. This authority to require methods of administration includes methods relating to the establishment and maintenance of personnel standards on a merit basis as concerns all employees of county welfare boards except those employed in an institution, sanatorium, or hospital.

The authority to promulgate rules and regulations under 393.07 Subd. 5 is expressly referred to in Minn. Stat. 375.62.

In addition to these specific grants of authority, the Commissioner of Public Welfare has general authority to promulgate rules and regulations "to comply with the requirements of the federal social security act needed to qualify the State to obtain grants-in-aid available under the act". Minn. Stat. § 393.07 Subd. 3. See also, Minn. Stat. § 256.011.

5. Pursuant to such statutory authority the Department of Public Welfare has adopted comprehensive administrative rules which regulate the administration of the Minnesota Merit System.[2/]

6. The Minnesota Supreme Court upheld the authority of the Commissioner of Public Welfare to promulgate rules and regulations in quashing a writ of mandamus brought by the Hennepin County Welfare Board against the county auditor in an attempt to force payment of salaries in excess of the maximum rates established by the Director of Social Welfare.[3/]

> . . . . .it is clear that the Director of Social Welfare was clearly right in adopting and promulgating a merit plan which includes initial, intervening, and maximum rates of pay for each class of position of the county welfare board system included within the plan and that the plan so adopted was binding upon all county welfare boards within the state. . . . In our opinion the federal and state acts, properly construed, provide that the Federal Security Administrator as well as the Director of Social Welfare shall have authority to adopt rules and regulations with respect to the selection, tenure of office and compensation of personnel within initial, intervening and maximum rates of pay but shall have no authority or voice in the selection of any particular person for a position in the state welfare program nor the determination of his tenure of office and individual compensation.

State ex rel. Hennepin County Welfare Board and another v. Robert F. Fitzsimmons, et al., 239 Minn. 407, 420, 58 N.W. 2d 882, 890 (1953).

7. The above-cited proposed rule amendments are promulgated in accordance with the provisions of applicable Minnesota statutes and expressly guarantee the rights of public employers and Minnesota Merit System employees in conformance with the terms of the state's Public Employment Labor Relation Act (Minn. Stat. §§ 179.61 - 179.77).

2/ 12 MCAR §§ 2.490 - 2.841

3/ "Director of Social Welfare" was the former title of the Commissioner of Public Welfare.

8. Enactment of the Community Social Services Act, Laws of 1979, Ch. 324, Minn. Stat. §§ 256E .01 - 256E .12, changes the appointing authority of some or, at the option of the county board, all of the county welfare board employees from the welfare board to the county board. These affected employees are engaged in administering federal grant -in-aid programs requiring a merit system of personnel administration. The act also authorizes the Commissioner of Public Welfare to "eliminate or revise all applicable department rules as appropriate to accommodate sections 256E .01 to 256E .12". Laws of 1979, Ch. 324, § 5; Minn. Stat. 256E .05 Subd. 3(b). Failure to cover the employees transferred to the jurisdiction of the county board under a federally approved merit system, as the Minnesota Merit System is, would result in non-compliance with the federal standards. Such non-compliance could lead to the loss of federal grants-in-aid. Thus, it is "appropriate" to revise the Minnesota Merit System rules to include employees of county boards engaged in the administration of federal grant -in-aid programs in order to ensure continued receipt of federal monies.

II

The justification establishing the need for and reasonableness of the specific substantive provisions of the proposed rules, all of which concern the Minnesota Merit System operation, is as follows:

1. 12 MCAR § 2.490

This rule deals with definitions as used in the Minnesota Merit System rules. The first two amendments add the words "county board" to the definitions of "appointing authority" and "board". The federal government clearly requires county welfare employees to be under a federally approved merit system as a mandatory condition of continued federal financial participation in both welfare programmatic costs and costs of administration. The Minnesota legislature passed the Community Social Services Act ("CSSA") on June 5, 1979 (See, Chapter 324, Laws 1979) which became effective July 1, 1979. That law changed employers of county welfare employees from the county welfare board to the county board. The Minnesota Merit System rules in effect at the time CSSA was passed only covered welfare board or human service board employees. The Merit System rules did not cover county board employees performing welfare functions. These amendments are needed in light of the need to continue coverage of employees by an approved merit system which is the condition of continued receipt of federal welfare monies. They are reasonable in view of the passage of CSSA changing employer from the county welfare board to

the county boards.

The first proposed amendment to the definition of "county agency" to include "county board" is also based on a need for continued coverage of employees by an approved merit system and is a reasonable addition to the definition of "county agency" designed to meet the need. The second amendment to this definition identifies those programs involving federal grants-in-aid for welfare programs as distinguished from other county programs such as highway programs, the auditor's and treasurer's function and others where such grants are not involved. It is needed in order to limit and define Merit System program coverage and reasonably defines those kinds of welfare programs that are wholly or partially funded by grants-in-aid requiring a merit system of personnel administration.

The first amendment to the definition of "employee" to include "county board" is again, based on the same need and reasonableness as those amendments proposed for the definitions of "appointing authority" and "board". The second amendment to this definition is needed to limit coverage by the Minnesota Merit System to employees who are engaged in the administration of community social service or income maintenance programs.

The last amendment proposed for this rule is a new definition which defines the term "county welfare board" to be the county welfare board, county board or human service board. Over the last several years as new and amended rules have been adopted the generic term "appointing authority" has been substituted for "county welfare board" in the Merit System rules. There remain however, many references to "county welfare boards". This amendment is needed to assure that those portions of the rules using "county welfare board" apply to human service boards and county boards where they are the appointing authority. It is reasonable in that it makes the rules applicable to all appointing authorities under the Merit System without requiring present amendments to all the rules still employing the term "county welfare board".

2. 12 MCAR § 2.491

This rule deals with a statement of policy and means of effecting policy. Amendments are proposed to D. 1. of the rule governing positions covered by the rule.

The first amendment to this rule merely clarifies that both employees and positions they occupy are covered by the rules.

The second amendment to the rule is needed to substitute the more general term of appointing authority for the specific reference to Minnesota county welfare boards so that former employees of county welfare boards, who are now employed by county boards, are covered under the rules. Likewise, it is needed to define the scope of Merit System coverage as being limited to positions and employees engaged in the administration of welfare programs as opposed to other county employees, under the direction of county boards, who are not engaged in such programs.

The third amendment is needed to clarify the fact that elected members as well as appointed members of county boards, county welfare boards or human service boards are not covered by the rules.

The last amendment proposed to this rule specifically exempts the position of director of community social services from the rules. The Community Social Services Act provides that this person shall serve at the pleasure of the board (Laws of 1979, Ch 324, §§, Minn. Stat. 256E .08 Subd. 2 [1979]). The amendment above is needed in order that the rules be in conformity with the cited provision of the act.

Proposed temporary rules amending Minnesota Merit System Rules 12 MCAR § 2.490 a. and 12 MCAR § 2.491 a. were published by the Department of Public Welfare in 4 S.R. 759 (November 12, 1979). Those temporary rules were approved by the Attorney General on December 12, 1979, adopted by the Department of Public Welfare on December 12, 1979, and filed with the Secretary of State on December 17, 1979. The permanent rule changes being proposed today do not differ substantially from those approved on a temporary basis.

The foregoing authorities and comments are submitted in justification of final adoption of the above cited proposed rule amendments.

Arthur E. Noot
Commissioner

Dated: January 9, 1980

Merit Sys. Ex "F"

STATE OF MINNESOTA

DEPARTMENTS OF PUBLIC WELFARE, PUBLIC SAFETY AND HEALTH

IN THE MATTER OF THE PROPOSED AMENDMENTS
OF RULES OF THE MINNESOTA MERIT SYSTEM
GOVERNING DEFINITIONS AND POSITIONS
COVERED BY THE RULES (12 MCAR § 2.490
and 2.491)

PERSONNEL TO TESTIFY

RECEIVED
JAN 1 5 1980
OFFICE OF HEARING
EXAMINERS

Ralph W. Corey, Merit System Supervisor, will testify for the Minnesota Merit System at the public hearing in the above-entitled matter to be held on February 11, 1980, commencing at 9:30 A.M. in the Centennial Office Building, Fourth Floor, Room A, 658 Cedar Street, St. Paul, Minnesota.

Betty Carlson, Senior Personnel Representative with the Merit System, will also be present.

Dated: January 9, 1980

Ralph W. Corey
Merit System Supervisor

Merit Sys. Ex "I"

RECEIVED
JAN 15 1980
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING DEFINITIONS AND POSITIONS COVERED BY THE RULES (12 MCAR § 2.490 and 2.491)

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

LINDA M. PETERSON, being duly sworn on oath deposes and says:

1) That she is an employee of the Special Services Division of the Department of Public Welfare for the State of Minnesota.

2) That on the 4th day of January, 1980, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 4th day of January, 1980, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Linda M. Peterson

Subscribed and sworn to before me this 10 day of January, 1980.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

Merit Sys. Ex G

RECEIVED
JAN 15 1980
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING DEFINITIONS AND POSITIONS COVERED BY THE RULES (12 MCAR § 2.490 and 2.491)

CERTIFICATE OF DELIVERY OF THE SECRETARY OF STATE'S LIST

I hereby certify that the attached 337 labels & 4 sheets constitute the complete list of persons, associations, and other interested groups who as of 8:10 o'clock A. .M., this 4th day of Jan., 1980, have requested pursuant to M.S. 1976, 15.0412 Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

BY

Kathy Hyelin

Merit Sys Ex. 5.

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JAN 16 1980
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EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENTS
OF RULES OF THE MINNESOTA MERIT SYSTEM
GOVERNING DEFINITIONS AND POSITIONS
COVERED BY THE RULES (12 MCAR § 2.490 and 2.491)

AFFIDAVIT OF MAILING

Linda M Peterson, being first duly sworn, deposes and says:

That on the 7th day of January, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Linda M Peterson

Subscribed and sworn to before me
this 10 day of January,
1980.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

Merit Sys Ex R

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EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING DEFINITIONS AND POSITIONS COVERED BY THE RULES (12 MCAR § 2.490 and 2.491)

AFFIDAVIT OF ADDITIONAL MAILING

Linda M Peterson, being first duly sworn, deposes and says:

That on the 7th day of January, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to mailing the attached Notice of Hearing to all persons and associations listed on the Secretary of State's list, she also served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid to the following agencies:

All Minnesota County Welfare Departments
All Minnesota Human Service Boards
All Minnesota Area Mental Health Boards
All Minnesota State Hospitals
Union Representatives (19)
Merit System Council Members (3)
Personnel Directors (4)

Linda M Peterson

Subscribed and sworn to before me
this 10 day of January
1980.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

Merit Sys. Ex. 17

RECEIVED
JAN 19 1980
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING DEFINITIONS AND POSITIONS COVERED BY THE RULES (12 MCAR § 2.490 and 2.491)

CERTIFICATE OF DELIVERY OF THE SECRETARY OF STATE'S LIST

I hereby certify that the attached 33 labels + 4 sheets constitute the complete list of persons, associations, and other interested groups who as of 2:10 o'clock P .M., this 16th day of January, 1980, have requested pursuant to M.S. 1976, 15.0412 Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

BY

Kathy Lyeton

Merit Sys. Ex "D"

RECEIVED
JAN 15 1980
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING DEFINITIONS AND POSITIONS COVERED BY THE RULES (12 MCAR § 2.490 and 2.491)

AFFIDAVIT OF MAILING OF CORRECTION IN NOTICE OF HEARING

Linda M Peterson, being first duly sworn, deposes and says:

That on the 11 day of January, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached "Correction in Notice of Hearing" by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and assiciations at the addresses listed on the Certificate of the Secretary of State. This "Correction Notice" was also mailed to all persons or organizations listed on the Affidavit of Additional Mailing.

Linda M Peterson

Subscribed and sworn to before me this 15 day of January 1980.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENTS
OF RULES OF THE MINNESOTA MERIT SYSTEM
GOVERNING DEFINITIONS AND POSITIONS
COVERED BY THE RULES (12 MCAR § 2.490 and 2.491)

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above captioned rules be held in Conference Room A, fourth floor, Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota, on February 11, 1980, commencing at 9:30 A.M. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons, 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.

Dated: December 19, 1979

Arthur Noot

ARTHUR E. NOOT
Commissioner of Public Welfare