

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 726

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 9/1
DATE FOR REVIEW 9/14
DATE DUE 9/21

Adopted w/a hearing X
Adopted w/o a hearing _____
Temporary rule _____

Approved _____ Disapproved X Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ REVISOR – disapproved 9/8/8
– approved 9/10/

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 8.7.81

✓ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
5.30.81 Date of Hearing (changed from 5.16.81)

✓ Certificate of Board's Authorizing Resolution

___ Notice of rulemaking
_____ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
4.29.81 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate

✓ Publication in State Register
4.20.81 At least 30/~~20~~ days prior to hearing/~~adoption~~

✓ Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

N/A Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness
" of Evidence

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

NA Affidavit of Mailing Notice of Submission to Attorney General

___ Notice of Submission to the Attorney General

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

WARREN SPANNAUS
ATTORNEY GENERAL

January 7, 1982

TELEPHONE
(612) 296-6196

RECEIVED
JAN 14 1982
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Mr. Kenneth L. Peatross
Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

Dear Mr. Peatross:

Following our rejection of the proposed adoption of 5 MCAR § 3.002 on September 21, 1981, we were asked to review our analysis and reconsider the conclusion. Considering the wide-spread interest in the issue and the potential impact on the teaching profession of this state, we have agreed to treat these requests as courts frequently treat motions for reconsideration following a decision. Thus, on October 14, 1981, our attorney representing the Board of Teaching wrote the Board's secretary that this office ". . . agreed to accept additional legal comments" regarding the proposed rule. In reliance on our willingness to do so, the Board did not withdraw the proposed rule as it ordinarily would have done under the provisions of Minn. Stat. § 15.0412, subd. 9 (1980).

We have now completed our follow-up review of the proposed adoption of 5 MCAR § 3.002. In conducting a reexamination, we have been benefited by excellent commentary from the Minnesota School Boards Association, the Minnesota Education Association and the Minnesota Federation of Teachers. The intensive legal research and discussion prompted by this issue has been time consuming and thorough. We regret if the delay has inconvenienced the Board.

The issue here is whether the Board of Teaching can legally adopt the proposed life licensure rule. Contrary to some persons' apparent belief, adoption of such a rule is not the role of the Office of the Hearing Examiner or the Office of the Attorney General. The wisdom of granting a life license lies exclusively with the Board of Teaching.

At the outset we must again observe that this proposed rule raises certain potential legal problems. It can be argued that it treats some teachers differently from others merely because of <u>when</u>

they taught. And, that the particular time selected in order to determine life licensure eligibility is without any legitimate basis. Granting the privilege of life licensure to one group of teachers while denying it to another group who are similarly situated could be said to violate the U.S. Constitution's requirement of "equal protection of the laws." U.S. Const. amend. XIV, § 1. However, having in mind the very limited scope of our review authority,1/ and several persuasive legal authorities which have been called to our attention, we have now concluded that if the rule is interpreted in such a way as to minimize arbitrary distinctions and to comply with the legislative intent on this subject, we cannot find sufficient grounds for this office to declare that the rule is unvalid on its face. Our discussion follows.

The Board of Teaching has proposed the adoption of a rule, 5 MCAR § 3.002, which would permit the issuance of life licenses to teachers in certain limited circumstances. The rule provides in pertinent part:

> Any teacher currently holding a valid license to teach granted by the Minnesota Board of Teaching having a minimum of five years teaching experience in Minnesota, who was actually employed as a classroom teacher or other similar professional employee on a regular

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1/ Our decision to reconsider our earlier memo is based in part upon a concern that we not exceed the limited standard that is to be applied by our office in reviewing proposed rules. Minn. Stat. § 15.0412, subd. 4e (1980), provides that the Attorney General "shall review the rule as to its legality and its form to the extent that form relates to legality." In our view, the review authorized by this section is narrow in scope. Patently, it authorizes the Attorney General to reject a rule only if it is not legal. The courts are also authorized to declare administrative rules invalid. Minn. Stat. § 15.0417 (1980). According to section 15.0417, even a court may invalidate a rule only if it finds that the rule: (a) violates a constitutional provision; (b) exceeds the statutory authority of the agency, or (c) was adopted without compliance with statutory rulemaking procedures. Id. In assessing the legality of a proposed rule pursuant to section 15.0412, subd. 14e, we can see no reason why the Attorney General should have greater latitude than has been granted to the courts. Therefore, Minn. Stat. § 15.0417 (1980) can serve as a guide in determining the limits of our authority. However, if anything, we should be even more reluctant to declare a rule invalid than the courts are. This cautious approach is particularly appropriate where the rule has been upheld by the Office of the Hearing Examiner.

> contract in any one of three years immediately preceding July 1, 1969, may apply for and receive a life license for those grades, subjects, and fields for which Minnesota licensure was held prior to July 1, 1969, upon payment of a processing fee of thirty-five dollars ($35.00). The application period to apply to a life license according to the provisions of this rule shall expire July 1, 1982.

With respect to the proposed rule there does not appear to be any suggestion of procedural infirmity, so the only two grounds that must be examined are the agency's statutory authority and the constitutionality of the rule.

In assessing the statutory authority of the Board of Teaching to promulgate the proposed rule, it is useful to review the statutory history of life licensing for teachers. Prior to 1969, the legislature had established a teacher certification scheme in which the State Board of Education was authorized to issue initial teaching certificates for a two year period and to renew certificates for up to five years. Minn. Stat. § 125.07, subd. 1 (1967). Subdivision 2 of section 125.07 authorized the Board of Education to issue permanent teaching certificates. A teacher would be eligible for a permanent certificate if he or she held a five year certificate, had five years experience in the public schools of the state, and had been employed in the public schools some time during the two years preceding the date of application.

In 1969, the legislature significantly altered the teacher certification law. Effective July 1, 1969, Minn. Stat. § 125.07 (1967) was repealed. In its place, the legislature provided that: "Certificates shall expire and be renewed in accordance with rules promulgated by the state board of education." Minn. Stat. § 125.05, subd. 2 (1969). The plain implication of this new law was that permanent certificates could no longer be issued. However, permanent certificates issued prior to July 1, 1969, remained valid. Minn. Stat. § 125.05, subd. 3 (1969).

In 1973, teacher certification procedures were again altered. The Board of Teaching (then called the Teacher Standards and Certification Commission) was authorized to "develop and create criteria, rules and regulations for the certification of public school teachers" which were submitted to the State Board of Education for approval. Minn. Stat. § 125.185, subd. 4 (Supp. 1973). Subdivision 4 provided further that: "Subject to criteria, rules and regulations approved by the State Board of Education, the Commission shall also . . . grant life certificates to those who qualify according to requirements established by the [Board] . . . ."

In 1974, the legislature again addressed the issue of life or permanent certificates. It enacted Minn. Stat. § 125.071 (1974), which provides:

> Any teacher who was eligible to receive a life or permanent certificate prior to July 1, 1969, or any teacher in a private school who meets the same qualifications except the requirement of having taught in the public schools, in accordance with the provisions of Minnesota Statutes 1967, section 125.07, subdivision 2, may apply for and receive such certificate upon payment of a $10 fee provided that the application is submitted to the department of education prior to July 1, 1975.

Thus, teachers who had been eligible for a permanent certificate prior to July 1, 1969, but had failed to receive one were given a period of approximately one year in which to apply. In addition, the 1974 legislation opened eligibility for permanent certificates to teachers who had the requisite experience prior to July 1, 1969 in private rather than public schools. Significantly, when it enacted section 125.071 the legislature made no change in the express authority to grant life certificates that it had delegated to the Board of Teaching the previous year in Minn. Stat. § 125.185, subd. 4.

That authority remains viable today in substantially similar form: "The board of teaching shall also . . . grant life licenses to those who qualify according to requirements established by the board of teaching . . . ." Minn. Stat. § 125.185, subd. 4 (1980). This statute provides ample authority for the Board's promulgation of proposed rule 5 MCAR § 3.002. The rule would grant life licenses to teachers fulfilling the following requirements: (a) currently holding a valid teachers certificate, (b) five years experience in Minnesota, (c) employed as a teacher during one of the three years preceding July 1, 1969, and (d) payment of a $35.00 fee. We can see no reason why the broad statutory authority to grant life licenses based on the requirements established by the Board would not encompass the specific requirements contained in the proposed rule.

In our earlier memo we were concerned that the Board was not authorized to impose the requirement of one year of teaching during the three years preceding July 1, 1969. However, at this time we can find no statute or case that prohibits an administrative agency from exercising its broad rulemaking authority on a narrow basis as long as the classifications it creates do not violate constitutional strictures. The constitutional aspects of the classification are discussed below.

Critics of this proposed rule may also have been concerned that Minn. Stat. § 125.071, the 1974 grandfather provision, might somehow have limited the Board's otherwise broad authority to grant life licenses. The 1974 law is a specific statute dealing only with the granting of life licenses to teachers who qualified for them as of July 1, 1969. Moreover, the authority to grant life licenses to those teachers expired on July 1, 1975. As a specific statute, the 1974 law prevails over the more general provision authorizing the Board of Teaching to grant life licenses, but only to the extent the two are in irreconcilable conflict. Minn. Stat. § 645.26, subd. 1 (1980).

There is only one potential area of conflict; however it doesn't appear to be irreconcilable. The 1974 law allowed teachers who qualified for a life license prior to July 1, 1969 to receive one, but only if the application was submitted prior to July 1, 1975. Section 125.185, subd. 4, or any rule promulgated under it could be viewed to be in conflict if it purported to authorize issuance of life licenses to teachers covered by the 1974 law applying after the 1975 date. Thus, it could be argued that the proposed rule can be construed to apply not to that category of teachers, but only to thse who had taught one year during the three years preceding July 1, 1969, but had not qualified for a life certificate as of that date.

However, this interpretation appears to be unduly restrictive and would defeat the intent of the proposed rule. The rule is reasonably limited to only those teachers (1) who currently hold a valid Minnesota teacher license, (2) who have a minimum of five years experience, and (3) who were teaching in 1967, 1968 and/or 1969. Futhermore, the life license may only be granted for those ". . . grades, subjects, and fields" for which the applicant was licensed within the above-described three years. These qualifications sufficiently accord with the stated purpose for the proposed rule. Suffice to say those that qualify have been involved with teaching for 12-1/2 to 15-1/2 years.

Having concluded that the Board of Teaching has adequate statutory authority to promulgate the proposed rule, the only remaining question is whether it offends any constitutional provisions. In this context it is important to keep in mind the caution with which even the courts assess the constitutionality of statutes. It is well-established that statutes are presumed to be constitutional and will be declared invalid only if it is demonstrated beyond a reasonable doubt that the statute violates some constitutional provision. E.g., Wegan v. Village of Lexington, 309 N.W.2d 273, 279 (Minn. 1981). We are aware of no reason why administrative rules should be accorded any less deference.

As you recall, our main concern with the proposed rule was its classification of teachers. That is, the rule treats teachers who taught for any one of the three years preceding July 1, 1969 differently than those who did not. The constitutional basis for challenging classifications such as this is usually equal protection. The Minnesota Supreme Court has established a three-part test for evaluating such classifications which do not involve a suspect classification or a fundamental right:

(1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to particular conditions and needs;

(2) The classification must be genuine or relevant to the purpose of the law; that is, there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy;

(3) The purpose of the statute must be one that the state can legitimately attempt to achieve.

Miller Brewing Co. v. State, 284 N.W.2d 353, 356 (Minn. 1979).

The purpose of the rule, as presented by the Board of Teaching to the hearing examiner, is to enable teachers who were working toward and had legitimate expectations of receiving a permanent certificate prior to the repeal of Minn. Stat. § 125.07, subd. 2 (1967), to fulfill those expectations. Given the broad authority of the legislature and the Board of Teaching in the regulation and certification of teachers, there appears to be no basis for concluding that this is an impermissible purpose.

The classification established by the proposed rule is relevant to the purpose. The purpose of the rule is to reach those teachers whose reasonable expectation of qualifying for a life certificate in the future was suddenly terminated by the repeal of Minn. Stat. § 125.07 effective July 1, 1969. The teachers covered by this rule, those who had taught at least one year during the three years prior to July 1, 1969, obviously fall within that category. It is equally obvious that given the purpose of the rule, it is rational to exclude from its operation teachers who had not taught until after the repeal of the permanent certificate provision in 1969. The only remaining group of teachers are those who taught prior to 1969 but had not obtained a permanent certificate by that date.2/

2/ Those who taught prior to July 1, 1969 and had qualified for a permanent certificate by that date have already been afforded

(footnote continued)

The Board of Teaching exercised its factual and policy judgment to determine that a teacher who had been out of teaching for three consecutive years prior to July 1, 1969, did not have a sufficiently recent expectation of achieving a permanent certificate to warrant the remedial relief of the rule. In other words, if the teacher was not actively working toward qualification for a permanent certificate for three full years immediately prior to the repeal, he or she is not as deserving of relief as those who were actively working toward the certificate at the time.

While it may have been as reasonable, or even more reasonable, to provide for life licensing of teachers who had taught at any time prior to July 1, 1969, constitutional law does not require that a classification be the most reasonable possible. If the classification has any reasonable basis, it does not offend the constitution simply because it is "not made with mathematical nicety or because in practice it results in some in equality." Guilliams v. Commissioner of Revenue, 299 N.W.2d 138, 143 (Minn. 1980) (quoting Lindsley v. Natural Carbonic Gas Company, 220 U.S. 61, 78 (1911)). See also, City of New Orleans v. Dukes, 427 U.S. 297 (1976); Minnesota v. Clover Leaf Creamery Co., 66 L. Ed. 659 (1980).

The distinctions between those included within and those excluded from the operation of the rule are not arbitrary or fanciful, but are based on the reasoned judgment of the Board of Teaching and are rationally related to the purpose of providing permanent certificates to those teachers whose reasonable expectations were frustrated by the 1969 legislative action. As such, it does not appear to me that there is any basis on which to conclude that the rule is unconstitutional.

We have already expressed our concern that the classification established by the statute "seemingly destroys the general purpose of continuing education for teachers." However, we note that the legislature has specifically authorized the Board of Teaching to grant permanent certificates based on requirements established by the Board. It can only be assumed that the legislature granted the Board this authority and discretion in recognition of the potential effect that the granting of permanent certificates could have on

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(footnote continued)

an opportunity to fulfill their expectations by the 1974 grandfather law, Minn. Stat. § 125.071. See p. 4, infra. However, there are all sorts of reasons some teachers may not have obtained their certificate prior to the deadline. It is not unreasonable to include these persons within the eligibility provided by the proposed rule.

continuing education. In its presentation to the hearing examiner the Board concluded that many teachers already holding life licenses voluntarily participate in continuing education. Moreover, school boards can contractually require continuing education even for permanently licensed teachers if they wish to do so. The Board has made a factual and policy determination that the purposes of continuing education for teachers will not be so adversely affected by the issuance of permanent certificates so as to prohibit the promulgation of the rule.3/ The exercise by the administrative agency of its expertise in this area is entitled to substantial deference. See, e.g., Reserve Mining Co. v. Herbst, 256 N.W.2d 808, 824 (Minn. 1977). In any event, even though we may differ with the Board's assessment of the impact of the rule on continuing education or the wisdom of its conclusion, neither provides a basis on which to conclude that the rule is invalid. In addition, if the legislature is not satisfied with this rule it can clarify its intent through adoption of a bill.

For the foregoing reasons, we conclude that there is insufficient basis for this office to reject proposed rule 5 MCAR § 3.002 on the basis of legality or form as it relates to legality.4/ The Board may proceed accordingly.

Very truly yours,

Richard B. Allyn

RICHARD B. ALLYN
Chief Deputy
Attorney General

RBA:dml

3/ Accord, Report of the Hearing Examiner, dated July 10, 1981 at 4.

4/ Concern about the change in the processing fee from $20 to $35 which occurred after the Hearing Examiner's report, referred to in our letter of September 21, 1981, is likewise withdrawn. There was no legislative mandate to set a new fee and the Board is free to adopt a fee structure without proposing it in rule form.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : RICHARD B. ALLYN
Chief Deputy
Attorney General

DATE: 11/13/81

FROM : RICHARD S. SLOWES
Special Assistant
Attorney General

PHONE:

SUBJECT: Proposed Adoption of 5 MCAR § 3.002 Governing Procedures for the Issuance of Life Licenses

The Board of Teaching has proposed the adoption of a rule, 5 MCAR § 3.002, which would permit the issuance of life licenses to teachers in certain limited circumstances. The rule provides in pertinent part:

> Any teacher currently holding a valid license to teach granted by the Minnesota Board of Teaching having a minimum of five years teaching experience in Minnesota, who was actually employed as a classroom teacher or other similar professional employee on a regular contract in any one of three years immediately preceding July 1, 1969, may apply for and receive a life license for those grades, subjects, and fields for which Minnesota licensure was held prior to July 1, 1969, upon payment of a processing fee of thirty-five dollars ($35.00). The application period to apply for a life license according to the provisions of this rule shall expire July 1, 1982.

By memo dated September 21, 1981, Ted Grindal notified the Board of Teaching that the rule had been rejected by our office because it is beyond the statutory authority of the Board. At your request, I have reviewed the matter, including written statements submitted to our office by both the Minnesota School Board Association and the Minnesota Education Association. My conclusion is that there are not sufficient grounds for this office to declare the rule invalid.

The first issue that must be addressed is the standard that is to be applied by our office in reviewing rules. Minn. Stat. § 15.0412, subd. 4e (1980) provides for our review of rules. It states that the Attorney General "shall review the rule as to its legality and its form to the extent that form relates to legality." In my view, the review authorized by this section is narrow in scope. Patently, it authorizes the Attorney General to reject a rule only if it is not legal. The courts are also authorized to

declare administrative rules invalid. Minn. Stat. § 15.0417 (1980). According to section 15.0417, even a court may invalidate a rule only if it finds that the rule: a) violates a constitutional provision; b) exceeds the statutory authority of the agency, or c) was adopted without compliance with statutory rulemaking procedures.[1/] Id.

In assessing the legality of a proposed rule pursuant to section 15.0412, subd. 14e, I can see no reason why the Attorney General should have greater latitude than has been granted to the courts. Therefore, Minn. Stat. § 15.0417 (1980) can serve as a guide in determining the limits of our authority. However, if anything, we should be even more reluctant to declare a rule invalid than the courts are. With respect to proposed rule 5 MCAR § 3.002, there does not appear to be any suggestion of procedural infirmity, so the only two grounds that must be examined are the agency's statutory authority and the constitutionality of the rule.

In assessing the statutory authority of the Board of Teaching to promulgate the proposed rule, it is useful to review the statutory history of life licensing for teachers. Prior to 1969, the legislature had established a teacher certification scheme in which the State Board of Education was authorized to issue initial teaching certificates for a two year period and to renew certificates for up to five years. Minn. Stat. § 125.07, subd. 1 (1967). Subdivision 2 of section 125.07 authorized the Board of Education to issue permanent teaching certificates. A teacher would be eligible for a permanent certificate if he or she held a five year certificate, had five years experience in the public schools of the state, and had been employed in the public schools some time during the two years preceding the date of application.

In 1969, the legislature significantly altered the teacher certification law. Effective July 1, 1969, Minn. Stat. § 125.07 (1967) was repealed. In its place, the legislature provided that: "Certificates shall expire and be renewed in accordance with rules promulgated by the state board of education." Minn. Stat. § 125.05, subd. 2 (1969). The plain implication of this new law was that permanent certificates could no longer be issued. However, permanent certificates issued prior to July 1, 1969 remained valid. Minn. Stat. § 125.05, subd. 3 (1969).

1/ In Minnesota-Dakotas Retail Hardware Ass'n v. State, 279 N.W.2d 360 (Minn. 1979), the Supreme Court noted that even its authority to review rules on their face under Minn. Stat. § 15.0417 is narrower than its authority to review agency action enforcing a rule under Minn. Stat. § 15.0425 (1980). Id. at 363.

In 1973, teacher certification procedures were again altered. The Board of Teaching (then called the Teacher Standards and Certification Commission) was authorized to "develop and create criteria, rules, and regulations for the certification of public school teachers" which were submitted to the State Board of Education for approval. Minn. Stat. § 125.185, subd. 4 (Supp. 1973). Subdivision 4 provided further that: "Subject to criteria, rules, and regulations approved by the State Board of Education, the Commission shall also . . . grant life certificates to those who qualify according to requirements established by the [Board] . . . ."

In 1974, the legislature again addressed the issue of life or permanent certificates. It enacted Minn. Stat. § 125.071 (1974), which provides:

> Any teacher who was eligible to receive a life or permanent certificate prior to July 1, 1969, or any teacher in a private school who meets the same qualifications except the requirement of having taught in the public schools, in accordance with the provisions of Minnestoa Statutes 1967, section 125.07, subdivision 2, may apply for and receive such certificate upon payment of a $10 fee provided that the application is submitted to the department of education prior to July 1, 1975.

Thus, teachers who had been eligible for a permanent certificate prior to July 1, 1969, but had failed to receive one were given a period of approximately one year in which to apply. In addition, the 1974 legislation opened eligibility for permanent certificates to teachers who had the requisite experience prior to July 1, 1969 in private rather than public schools. Significantly, when it enacted section 125.071 the legislature made no change in the express authority to grant life certificates that it had delegated to the Board of Teaching the previous year in Minn. Stat. § 125.185, subd. 4.

That authority remains viable today in substantially similar form: "The board of teaching shall also . . . grant life licenses to those who qualify according to requirements established by the board of teaching . . . ." Minn. Stat. § 125.185, subd. 4 (1980). This statute provides ample authority for the Board's promulgation of proposed rule 5 MCAR § 3.002. The rule would grant life licenses to teachers fulfilling the following requirements: a) currently holding a valid teachers certificate, b) five years experience in Minnesota, c) employed as a teacher during one of the three years preceding July 1, 1969, and d) payment of a $35.00 fee.

I can see no reason why the broad statutory authority to grant life licenses based on the requirements established by the Board would not encompass the specific requirements contained in the proposed rule.

Ted Grindal seemed concerned that the Board was not authorized to impose the requirement of one year of teaching during the three years preceding July 1, 1969. However, I am aware of no statute or case that prohibits an administrative agency from exercising its broad rulemaking authority on a narrow basis as long as the classifications it creates do not violate constitutional strictures. The constitutional aspects of the classification are discussed below.

Mr. Grindal may also have been concerned that Minn. Stat. § 125.071, the 1974 grandfather provision, might somehow have limited the Board's otherwise broad authority to grant life licenses. The 1974 law is a specific statute dealing only with the granting of life licenses to teachers who qualified for them as of July 1, 1969. Moreover, the authority to grant life licenses to those teachers expired on July 1, 1975. As a specific statute, the 1974 law prevails over the more general provision authorizing the Board of Teaching to grant life licenses, but only to the extent the two are in irreconciliable conflict. Minn. Stat. § 645.26, subd. 1 (1980).

There is only one potential area of conflict. The 1974 law allowed teachers who qualified for a life license prior to July 1, 1969 to receive one, but only if the application was submitted prior to July 1, 1975. Section 125.185, subd. 4, or any rule promulgated under it could be viewed to be in conflict if it purported to authorize issuance of life licenses to teachers covered by the 1974 law applying after the 1975 date. However, the proposed rule can be construed to apply not to that category of teachers, but only to those who had taught one year during the three years preceding July 1, 1969, but had not qualified for a life certificate as of that date. So construed, both the general and the specific statutory provisions would be effectuated, with the particular provision being an exception to the general authority accorded to the Board. This treatment is just what is mandated by Minn. Stat. § 645.26, subd. 1 (1980).

Having concluded that the Board of Teaching has adequate statutory authority to promulgate the proposed rule, the only remaining question is whether it offends any constitutional provisions. In this context it is important to keep in mind the caution with which even the courts assess the constitutionality of statutes. It is well-established that statutes are presumed to be constitutional and will be declared invalid only if it is

demonstrated beyond a reasonable doubt that the statute violates some constitutional provision. E.g., Wegan v. Village of Lexington, 309 N.W.2d 273, 279 (Minn. 1981). I am aware of no reason why administrative rules should be accorded any less deference.

Ted Grindal's main concern with the proposed rule was its classification of teachers. That is, the rule treats teachers who taught for any one of the three years preceding July 1, 1969 differently than those who did not. The constitutional basis for challenging classifications such as this is usually equal protection. The Minnesota Supreme Court has established a three-part test for evaluating such classifications which do not involve a suspect classification or a fundamental right:

(1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to particular conditions and needs;

(2) The classification must be genuine or relevant to the purpose of the law; that is, there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy;

(3) The purpose of the statute must be one that the state can legitimately attempt to achieve.

Miller Brewing Co. v. State, 284 N.W.2d 353, 356 (Minn. 1979).

The purpose of the rule, as presented by the Board of Teaching to the hearing examiner, is to enable teachers who were working toward and had legitimate expectations of receiving a permanent certificate prior to the repeal of Minn. Stat. § 125.07, subd. 2 (1967), to fulfill those expectations. Given the broad authority of the legislature and the Board of Teaching in the regulation and certification of teachers, there appears to be no basis for concluding that this is an impermissible purpose.

The classification established by the proposed rule is relevant to the purpose. The purpose of the rule is to reach those teachers whose reasonable expectation of qualifying for a life certificate in the future was suddenly terminated by the repeal of Minn. Stat. § 125.07 effective July 1, 1969. The teachers covered

by the rule, those who had taught at least one year during the three years prior to July 1, 1969, obviously fall within that category. It is equally obvious that given the purpose of the rule it is rational to exclude from its operation teachers who had not taught until after the repeal of the permanent certificate provision in 1969. The only remaining group of teachers are those who taught prior to 1969 but had not qualified for a permanent certificate by that date.2/

The Board of Teaching exercised its factual and policy judgment to determine that a teacher who had been out of teaching for three consecutive years prior to July 1, 1969, did not have a sufficiently recent expectation of achieving a permanent certificate to warrant the remedial relief of the rule. In other words, if the teacher was not actively working toward qualification for a permanent certificate for three full years immediately prior to the repeal, he or she is not as deserving of relief as those who were actively working toward the certificate at the time.

While it may have been as reasonable, or even more reasonable, to provide for life licensing of teachers who had taught at any time prior to July 1, 1969, constitutional law does not require that a classification be the most reasonable possible. If the classification has any reasonable basis, it does not offend the constitution simply because it is "not made with mathematical nicety or because in practice it results in some in equality." Guilliams v. Commissioner of Revenue, 299 N.W.2d 138, 143 (Minn. 1980) (quoting Lindsley v. Natural Carbonic Gas Company, 220 U.S. 61, 78 (1911)).

The distinctions between those included within and those excluded from the operation of the rule are not arbitrary or fanciful, but are based on the reasoned judgment of the Board of Teaching and are rationally related to the purpose of providing permanent certificates to those teachers whose reasonable expectations were frustrated by the 1969 legislative action. As such, it does not appear to me that there is any basis on which to conclude that the rule is unconstitutional.

Ted Grindal also expressed the concern that the classification established by the statute "seemingly destroys the general purpose of continuing education for teachers." In this regard, it must first be noted that the legislature has specifically

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2/ Those who taught prior to July 1, 1969 and had qualified for a permanent certificate by that date have already been afforded an opportunity to fulfill their expectations by the 1974 grandfather law, Minn. Stat. § 125.971. See p. 3, supra.

authorized the Board of Teaching to grant permanent certificates based on requirements established by the Board. It can only be assumed that the legislature granted the Board this authority and discretion in recognition of the potential effect that the granting of permanent certificates could have on continuing education. In its presentation to the hearing examiner the Board concluded that many teachers already holding life licenses voluntarily participate in continuing education. Moreover, school boards can contractually require continuing education even for permanently licensed teachers if they wish to do so. The Board has made a factual and policy determination that the purposes of continuing education for teachers will not be so adversely affected by the issuance of permanent certificates so as to prohibit the promulgation of the rule. The exercise by the administrative agency of its expertise in this area is entitled to substantial deference. See, e.g., Reserve Mining Co. v. Herbst, 256 N.W.2d 808, 824 (Minn. 1977). In any event, even though we may differ with the Board's assessment of the impact of the rule on continuing education or the wisdom of its conclusion, neither provides a basis on which to conclude that the rule is invalid.

For the foregoing reasons, I conclude that there is no basis on which this office can reject proposed rule 5 MCAR § 3.002 on the basis of legality or form as it relates to legality.

RS/kd

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JERRY ANDERSON
Special Assistant
Attorney General

DATE: September 1, 1981

FROM : SHEILA S. FISHMAN
Special Assistant
Attorney General

PHONE: 6-9200

SUBJECT: In the Matter of the Proposed Adoption of 5 MCAR § 3.002 Governing Procedures for the Issuance of Life Licenses

The Board of Teaching has submitted to the Attorney General a rule providing for the issuance of life licenses to certain teachers. The Report of the Hearing Examiner dated July 10, 1981 does not review the statutory history surrounding the question of life licensure. Accordingly, I am submitting this memorandum in order to aid your review of the proposed rule.

In 1969 the Legislature repealed Minn. Stat. § 125.07 which provided for permanent certification of teachers who successfully taught in the public schools of the State for five years. During that session, the Legislature enacted Section 125.05, subd. 2 which foresaw that licenses would "expire and be renewed."

In 1973, however, the Legislature gave the Board the authority to "grant life licenses to those who qualify according to requirements established by the Board of Teaching." Minn. Stat. § 125.185, subd. 4. However, one year later in Section 125.071 the Legislature permitted those who qualified for licensure under the previously enacted Section 125.07 plus certain teachers in private schools, to apply for permanent (life) certificates, "provided that the application [of the teacher] is submitted to the Department of Education prior to July 1, 1975." (emphasis added.) Section 125.071 has never been repealed, although it has expired.

The Legislature did not repeal the authority contained in Section 125.185 and has frequently re-enacted that provision while revising other sections of the same law.

SSF/kts

cc: Kenneth Peatross
Executive Secretary
Mn. Board of Teaching

RECEIVED
AUG 2 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-02

File

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : RAY C. OLSON, Chairman
MINNESOTA STATE BOARD OF TEACHING

DATE: 1/8/82

FROM : J. MICHAEL MILES
Assistant Attorney General

PHONE: 296-6555

SUBJECT: IN THE MATTER OF THE PROPOSED ADOPTION OF A RULE OF THE BOARD OF TEACHING GOVERNING PROCEDURES FOR THE ISSUANCE OF LIFE LICENSES

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. Please 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 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 to the rules in the approved set.

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

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

Minnesota Board of Teaching

Adopted Rule Governing Procedures for the Issuance of Life Licenses

Rule as Adopted

5 MCAR S 3.002 Procedures for the issuance of life licenses. Any teacher currently holding a valid license to teach granted by the Minnesota Board of Teaching ~~have~~ having a minimum of five years teaching experience in Minnesota, who was actually employed as a classroom teacher or other similar professional employee on a regular contract in any one of three years immediately preceding July 1, 1969, may apply for and receive a life license for those grades, subjects, and fields for which Minnesota licensure was held prior to July 1, 1969, upon payment of a processing fee of ~~twenty dollars ($20.00)~~ $35. The application period to apply for a life license according to the provisions of this rule shall expire July 1, 1982. The application shall be in writing on a life license application form addressed to:

Minnesota State Department of Education
Personnel Licensing Section
Sixth Floor, Capitol Square Building
550 Cedar Street

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

St. Paul, Minnesota 55101

Life license application forms may be obtained from:

Minnesota State Department of Education
Personnel Licensing Section
Sixth Floor, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2046

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

September 4, 1981

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Minnesota Board of Teaching

Rule Numbers: 5 MCAR 3.002

Rule Title: Adopted Rule Governing Procedures for the Issuance of Life Licenses

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference: none

The attached Rules are approved as to form.

APPROVED AS TO LEGALITY
1/8 19 82
WARREN SPANNAUS, ATTORNEY GENERAL
BY _____
~~SPECIAL~~ ASSISTANT ATTORNEY GENERAL

Steven C. Cross
Revisor of Statutes

Name: Ann L. Bateson
Ann L. Bateson

Title: Deputy Revisor

Phone: 296-1536

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN - 8 1982
Joan Anderson Growe
Secretary of State
10:15AM

SF-00006-02

STATE OF MINNESOTA rule file

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : KENNETH L. PEATROSS
Executive Secretary
Minnesota Board of Teaching

DATE: 9/21/81

FROM : H. THEODORE GRINDAL
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Adoption of 5 MCAR § 3.002 Governing Procedures for the Issuance of Life Licenses

The above-captioned rules have been rejected for the following reasons:

1. The amendment in line 14 of the processing fee from $20 to $35 occurred after the Hearing Examiner's report and appears to be a substantive change. Therefore, such a change should be reviewed by the Chief Hearing Examiner for substantial change.

2. The rule as adopted appears to be unreasonable and arbitrary. The Board of Teaching does indeed have broad rule making authority as set forth in Minn. Stat. § 125.185, Subd. 4, and also in Minn. Stat. § 125.05, Subd. 2.

The rule, however, unreasonably classifies the teachers currently without life licenses by virtue of at least one year of teaching prior to July 1, 1969.

The legislature granted the Board of Teaching broad authority, but not to treat one class of teachers differently because of when they happened to have taught. In 1974 the legislature intervened and gave the Board specific authority in Minn. Stat. § 125.071 to grant life licenses "provided the application [of the teacher] is submitted to the Department of Education prior to July 1, 1975." This specific authority expired on July 1, 1975 and has not been renewed.

Although there is broad authority, the Board has not been granted specific authority to grandfather in these teachers as the Minn. Stat. § 125.071 provision allowed. The current statutory authority does not appear to grant the Board the power to classify these teachers as the entire statute did. Furthermore, such a classification seemingly destroys the general purpose of continuing education for teachers. Such an inconsistency is not rectified by citing broad statutory authority.

The defect cited above cannot be remedied by returning to hearing or by resubmittal. More specific statutory authority is needed to allow such a classification to occur.

If you have any questions regarding this memorandum, please call me at your convenience.

HTG:sll

cc: Ms. Kathy Burek
Mr. Duane Harves

STATE OF MINNESOTA
BOARD OF TEACHING

IN THE MATTER OF: The proposed adoption of a rule of the Board of Teaching governing Procedures for the Issuance of Life Licenses

ORDER ADOPTING RULE

The above-entitled matter came on for hearing before the Board of Teaching of the State of Minnesota on the 30th day of May, 1981, at 9:00 a.m. in Conference Room D of the Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota 55155, after proper notice required by M.S. 1980, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Office of the Board of Teaching 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 rule and the reasonableness thereof.

NOW, THEREFORE, IT IS ORDERED that the rule identified as 5 MCAR § 3.002 Procedures for the Issuance of Life Licenses is adopted this 7th day of August, 1981, pursuant to the authority vested in the Board of Teaching.

STATE OF MINNESOTA
BOARD OF TEACHING

Ray C. Olson

Ray C. Olson, Chairman

Kenneth A. Ames

Kenneth A. Ames, Vice Chairman

OFFICE OF THE REVISOR OF STATUTES
Disapproval of Form of Rules

X The form of the attached rules is not approved. The revisor requests the changes described below before the rules will be approved.

1. Lowercase the words "Issuance," "Life," and "Licenses" in the headnote.

2. Add a period after the headnote.

3. After the first reference to the Minnesota Board of Teaching insert the word "have" and strike it. Underline the word "having" which follows. The word "have" was the word that appeared in the State Register.

Steven C. Cross
Revisor of Statutes

Name: Ann L. Bateson
Ann L. Bateson

Title: Deputy Revisor

Phone: 296-1536

_____ The changes requested by the revisor are approved by the agency.

_____ The changes requested by the revisor are not approved by the agency

_____
Agency's Representative

_____ The attorney general agrees that the changes requested by the revisor are form changes, not substantive changes.

_____
Assistant Attorney General

Rule as Adopted

5 MCAR § 3.002 Procedures for the Issuance of Life Licenses

Any teacher currently holding a valid license to teach granted by the Minnesota Board of Teaching having a minimum of five years teaching experience in Minnesota, who was actually employed as a classroom teacher or other similar professional employee on a regular contract in any one of three years immediately preceding July 1, 1969, may apply for and receive a life license for those grades, subjects, and fields for which Minnesota licensure was held prior to July 1, 1969, upon payment of a processing fee of ~~twenty dollars ($20.00)~~ thirty-five dollars ($35.00). The application period to apply for a life license according to the provisions of this rule shall expire July 1, 1982. The application shall be in writing on a life license application form addressed to:

Minnesota State Department of Education
Personnel Licensing Section
Sixth Floor, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Life license application forms may be obtained from:

Minnesota State Department of Education
Personnel Licensing Section
Sixth Floor, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2046

BT-81-005-RL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF TEACHING

In the Matter of the Proposed Adoption of
5 MCAR § 3.002 Governing Procedures for
the Issuance of Life Licenses.

REPORT OF THE
HEARING EXAMINER

On January 16, 1981, the Minnesota Board of Teaching (hereinafter "Board"), passed a resolution authorizing its Executive Secretary, Mr. Kenneth L. Peatross, to issue an Order for Hearing and Notice of Hearing in the above-entitled matter. Pursuant to the Order for and Notice of Hearing accordingly issued by Mr. Peatross on March 31, 1981, this matter came on for hearing before Richard C. Luis, duly appointed as Hearing Examiner by the Chief Hearing Examiner, at 9:00 a.m. on May 30, 1981, in Conference Room D, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota.

This Report is part of a rulemaking process held pursuant to Minn. Stat. Ch. 15, to determine whether the Board of Teaching should adopt a rule granting a life license to certain teachers for those grades, subjects and fields for which they held Minnesota licensure prior to July 1, 1969.

Sheila S. Fishman, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared as counsel for the Board. The Board's panel included Executive Secretary Peatross, Kathryn Rayburn, Bill Schneider, and Karsten Braaten. Gregory J. Waddick, Assistant Commissioner for Special Services, and George B. Droubie, Manager of the School Personnel Services Section, Minnesota Department of Education, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101 represented the Commissioner of Education, as required by Minn. Stat. § 125.185, subd. 4a (1980).

Two hundred and seven persons signed the hearing register, and 17 members of the public spoke at the hearing. The Board submitted 14 exhibits, the Commissioner of Education submitted one exhibit, and the public submitted five exhibits. The record in this matter remained open through June 12, 1981, and prior to the close of business on that day, the Hearing Examiner received 1,386 letters of comment. Those letters are part of the official record of this proceeding and are being submitted to the Board, along with this Report and the remainder of the record.

Pursuant to Minn. Stat. § 15.0412, subd. 4d and 4e (1980), this Report shall be available for review to all affected individuals upon request for at least five working days. Thereafter, the Board of Teaching shall, if it proposes to adopt the rule as recommended herein, submit the rule, together with the complete hearing record to the Attorney General and shall be responsible for notifying persons who have indicated that they wish to be notified of such filing. If the Board makes changes in the rule other than those recommended herein, it shall submit the rule with the complete hearing record to the Chief Hearing Examiner for a review of the changes prior to submitting it to the Attorney General for review.

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

FINDINGS OF FACT

Procedural Requirements

1. On March 16, 1981, the Board of Teaching filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Board's presentation.

2. On April 20, 1981, a Notice of Hearing and a copy of the proposed rules were published at 5 State Register 1636.

3. On April 29, 1981, the Board of Teaching mailed the Notice of Hearing to all persons and associations who had registered their names with the Board for the purpose of receiving such notice.

4. On May 5, 1981, the Board filed the following documents:

(a) The Notice of Hearing as mailed.
(b) The Board's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Board's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Board personnel who would represent the Board at the hearing together with the names of any other witnesses solicited by the Board to appear on its behalf.
(f) An Affidavit of Additional Notice.
(g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 5 State Register 1308 on February 23, 1981.

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

5. The record remained open through June 12, 1981, by order of the Hearing Examiner announced at the close of the hearing.

6. On May 15, 1981, the Board of Teaching filed a copy of the State Register in which the Notice of Hearing and proposed rule had been published. This constitutes a technical violation of 9 MCAR § 2.105 D., which mandates that such a filing occur at least 25 days prior to the date and time of the hearing. The Hearing Examiner finds that this tardiness did not prejudice any interested party since the Notice and proposed rule were actually published in the State Register more than 30 days in advance of the date and time of the hearing. In addition, no member of the public inquired of the Hearing Examiner for inspection of the record before the State Register copy was filed and the Hearing Examiner has received no complaint regarding this technical violation. The Hearing Examiner finds that the non-compliance described in this paragraph was technical, not substantial, in nature on the part of the Board of Teaching.

Statutory Authority and Discussion

7. The Board cites Minn. Stat. §§ 125.05, subd. 1 (1980), and 125.185, subd. 4 (1980), as authority for adoption of proposed 5 MCAR § 3.002. Minn. Stat., § 125.05, subd. 1 (1980), reads:

> Qualifications. The authority to license teachers as defined in section 125.03 is vested in the board of teaching except that the authority to license supervisory and support personnel is vested in the state board of education. Licenses shall be issued

to such persons as the board of teaching or the state board of education finds to be competent for their respective positions. Qualifications of teachers and other professional employees, except supervisory and support personnel, shall be determined by the board of teaching under the rules which it promulgates. Licenses under the jurisdiction of the board of teaching shall be issued through the licensing section of the department of education. Licenses under the jurisdiction of the state board of education shall be issued through the licensing section of the department of education.

Minn. Stat. § 125.185, subd. 4 (1980) reads:

> The board shall develop and create rules for the licensure of public school teachers and interns, and from time to time, the board of teaching shall revise or supplement the rules for licensure of public school teachers subject to the provisions of chapter 15. It shall be the duty of the board of teaching to establish rules for the approval of teacher education programs; provided these rules can encourage teacher educators to obtain periodic classroom teaching experience. The board of teaching shall also grant licenses to interns and to candidates for original licenses and receive recommendations from local committees as established by the board of teaching for the renewal of teaching licenses, grant life licenses to those who qualify according to requirements established by the board of teaching, and suspend or revoke licenses pursuant to sections 125.09 and 214.10. With regard to vocational education teachers the board of teaching shall adopt and maintain as its rules the rules of state board for vocational education.

The Hearing Examiner finds that the Board has documented its statutory authority to adopt the proposed rule.

8. Proposed 5 MCAR § 3.002 reads, in relevant part, as follows:

> Procedures for the issuance of life licenses. Any teacher currently holding a valid license to teach granted by the Minnesota Board of Teaching having a minimum of five years teaching experience in Minnesota, who was actually employed as a classroom teacher or other similar professional employee on a regular contract in any one of three years immediately preceding July 1, 1969, may apply for and receive a life license for those grades, subjects, and fields for which Minnesota licensure was held prior to July 1, 1969, upon payment of a processing fee of twenty dollars ($20.00). The application period to apply for a life license according to the provisions of this rule shall expire July 1, 1982. . . .

At 5 State Register 1637, the word "have" appears between "Teaching" and "a" as the 17th word in the body of the proposed rule. This is a misprint. The word "having" should be substituted for "have", as is shown on the Notice of Hearing as mailed. This would be a necessary and reasonable clerical change, not a substantial change.

9. The Board's 11-page, single-spaced, Statement of Need and Reasonableness adequately demonstrates the need for and reasonableness of the proposed rule by an affirmative presentation of facts. That Statement of Need and Reasonableness (Board's Ex. 7) is incorporated herein by reference. The Hearing Examiner finds proposed 5 MCAR § 3.002 to be needed and resaonable.

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

CONCLUSIONS

1. That the Board of Teaching gave proper notice of the hearing in this matter.

2. That the Board of Teaching has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subds. 4-4f (1980) and all other procedural requirements of law or rule.

3. That the Board of Teaching has documented its statutory authority to adopt the proposed rule, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subds. 3(4)(i) and (ii) (1980).

4. That the Board of Teaching has demonstrated the need for and reasonableness of the proposed rule by an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980).

5. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

6. That the finding and conclusion of need and reasonableness regarding proposed 5 MCAR § 3.002 does not preclude and should not discourage the Board of Teaching from further modification of the rule based upon an examination of the public comments, provided that no substantial change is made from the proposed rule as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

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

RECOMMENDATION

It is hereby recommended that the proposed rule be adopted consistent with the Findings and Conclusions made above.

Dated this 10th day of July, 1981.

Richard C. Luis

RICHARD C. LUIS
Hearing Examiner

M E M O R A N D U M

The Board of Teaching argues that it has proposed the rule under consideration in this matter in order to correct an inequity that was perpetrated on teachers who began their professional careers in a five-year cycle, advancing toward life licensure in various fields, but had that process thwarted when the Legislature eliminated "permanent certificates" in 1969. The Board's authority to rectify the perceived injustice comes from 1973 legislation which granted to the Board discretion to ". . . grant life licenses to those who qualify according to requirements established by the Board of Teaching. . . ." See, Minn. Stat. § 125.185. It should be noted that nothing in current law or rules prevents the Board from requiring continuing education for the affected class.

The issue of continuing education is the focus of those opposed to 5 MCAR § 3.002. The Department of Education's witnesses were the only participants in the public hearing who opposed the rule. The record reflects only about 15 letters in opposition, one from a teacher, out of nearly 1400 comments. The argument made is that the teaching profession in Minnesota will stagnate if

thousands of new life licenses are granted. However, the evidence is overwhelming that the affected class of teachers will continue their growth even if the rule is adopted, either because their employers require continuing education, or because many collective bargaining agreements mandate continuing education. In addition, it is clear that most of the teachers affected by this proposal will continue their education and development in a professional and personal sense because they want to. The record reflects that adoption of the proposed rule will free teachers to take courses and pursue professional activities as a matter of choice. This contrasts with the current situation, which finds teachers taking unwanted, but required, offerings.

The Department of Education further argues that the cost and administrative implications of the proposed rule make its adoption prohibitive. It estimates that 13,000 life licenses will be issued, and that the people who applied would then disappear as sources of funds to support the Department's licensing operation. However, it should be noted that thousands of affected teachers will still be re-certified regularly in areas for which they were not licensed before July 1, 1969.

R.C.L.

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik, being first duly sworn, deposes and says that on the 13th day of July, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of the Hearing Examiner, BT-81-005-RL

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat. § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Eileen A. Gaiovnik

Subscribed and sworn to before me this
13th day of July, 1981.

Susan C. Wojcik

SUSAN C. WOJCIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 26, 1986

Mr. Kenneth L. Peatross,
Executive Secretary
Minnesota Board of Teaching
Room 608, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Ms. Sheila S. Fishman
Special Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, Minnesota 55101

Mr. Gregory J. Waddick
Assistant Commissioner for Special Services
Minnesota Department of Education
Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Minnesota Board of Teaching

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MAR 16 1981
ADMINISTRATIVE
HEARINGS

Notice of Intent to Solicit Outside Opinion Concerning Proposed Rules Governing the Licensure of Elementary School Classroom Teachers, Licensure of Teachers in Middle Schools, Procedures for the Issuance of Life Licenses, Procedures for the Revocation or Suspension of Minnesota Teaching Licenses, Letters of Approval for Teachers to Teach Subjects or Fields for Which Current Valid Minnesota Licensure is not Held, Procedures for the Voluntary Surrender of Minnesota Teaching Licenses.

Notice is hereby given that the Minnesota Board of Teaching is considering adopting and/or amending rules governing the licensure of Elementary School Classroom Teachers, Licensure of Teachers in Middle Schools, Procedures for the Issuance of Life Licenses, Procedures for the Revocation or Suspension of Minnesota Teaching Licenses, Letters of Approval for Teachers to Teach Subjects or Fields for Which Current Valid Minnesota Licensure is not Held, Procedures for the Voluntary Surrender of Minnesota Teaching Licenses.

The proposed rules are authorized by Minnesota Statutes § 125.05 Subd. 1 and § 125.185 Subd. 4 (1980), which authorizes the Board to establish reasonable standards for the licensure of teachers. The proposed rules would establish reasonable standards and procedures related to the issuance of the licenses to teach in the State of Minnesota.

All interested or affected persons or groups may submit information related to the above cited proposed rules. Written or oral information and comment should be addressed to:

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2415

Any written material received by the Board related to the above cited proposed rules shall become part of the hearing record in the event that the proposed rules governing these subjects are promulgated.

Kenneth L. Peatross, Executive Secretary

Date: February 5, 1981

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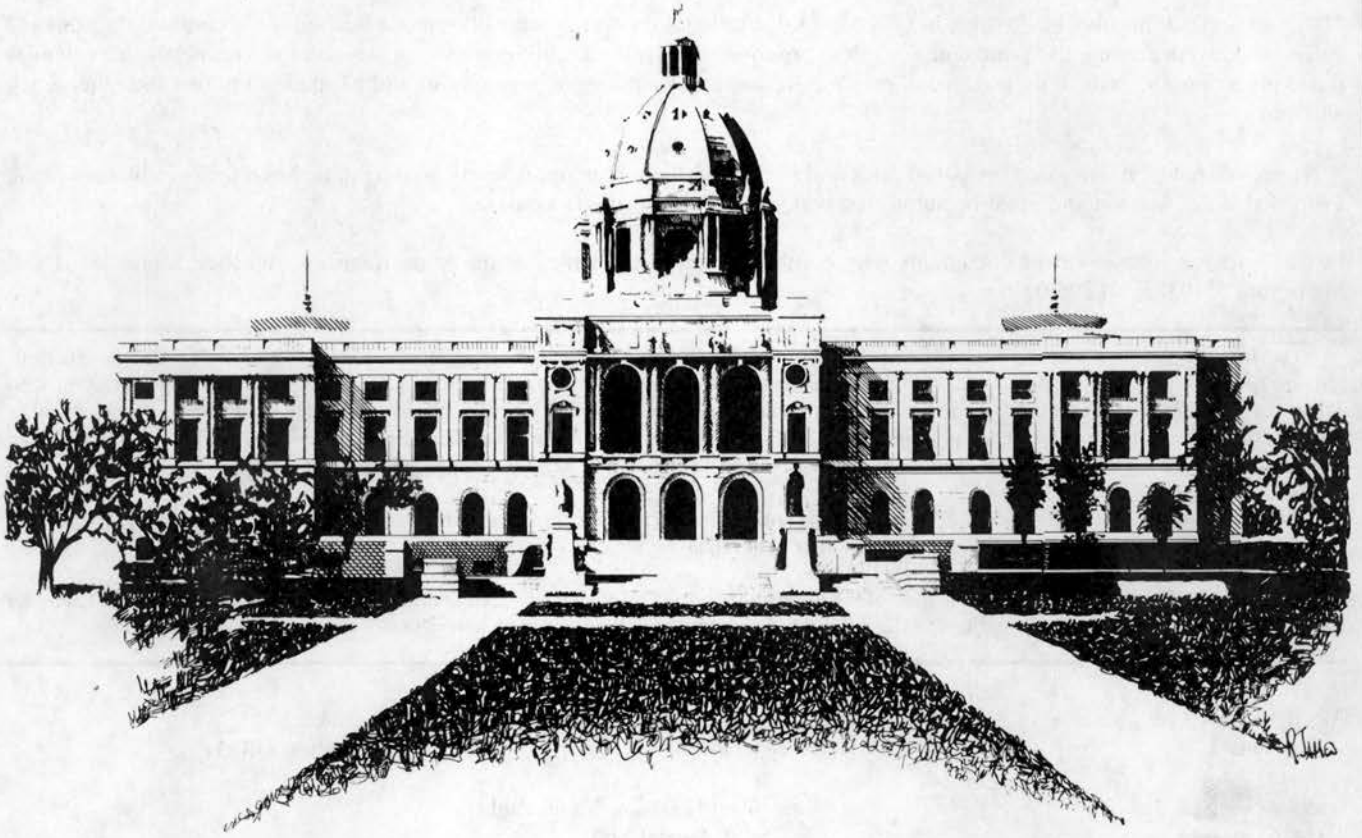
MAY 15 1981
ADMINISTRATIVE
HEARINGS

STATE REGISTER

STATE OF MINNESOTA



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April 20, 1981

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STATE REGISTER

Printing Schedule for Agencies

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44	Monday Apr 20	Monday Apr 27	Monday May 4
45	Monday Apr 27	Monday May 4	Monday May 11
46	Monday May 4	Monday May 11	Monday May 18

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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Albert H. Quie
Governor

James J. Hiniker, Jr.
Commissioner
Department of Administration

Stephen A. Ordahl
Director
State Register and
Public Documents Division

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How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION.** Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative lisitngs of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

The listings are arranged in the same order as the table of contents of the MCAR.

MCAR AMENDMENTS AND ADDITIONS

TITLE 5 EDUCATION

Part 3 Board of Teaching

5 MCAR § 3.002 (proposed) 1637

TITLE 6 ENVIRONMENT

Part 4 Pollution Control Agency

6 MCAR § 4.0033 (proposed) 1608
6 MCAR § 4.0041 (proposed) 1603
6 MCAR § 4.6086 (adopted) 1583

TITLE 11 PUBLIC SAFETY

Part 1 Public Safety Department

11 MCAR §§ 1.4092-1.4099 (proposed) 1631

TITLE 13 TAXATION

Part 1 Revenue Department

13 MCAR §§ 1.0001-1.0007 (proposed) 1572
13 MCAR §§ 1.0022, 1.0027 (proposed) 1572

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Public Safety
Driver & Vehicle Services Division

Proposed Rules Governing Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications [11 MCAR §§ 1.4092-1.4099]

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, § 15.0412, subd. 4, in the above entitled matter, in Room G-18 Transportation Building, John Ireland Boulevard, St. Paul, MN 55155, on May 28, 1981, commencing at 9:00 a.m., and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statement or arguments. Written materials may be submitted by mail to Jon Lunde, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, MN 55104, either before the hearing or within 5 working days after the close of the hearing (the hearing examiner may extend the written comment period up to 20 calendar days at the hearing). The proposed rules are subject to change as a result of the rule hearing process. The department therefore strongly urges those who may potentially be affected by the substance of the proposed rules to participate in the hearing process.

The commissioner proposes to adopt rules relating to the following matters: The proposed rules pertain to the administration of provisions of Minnesota Statutes Chapter 171 which are related to the granting, denying, restricting, suspending, revoking or cancelling of drivers' licenses of persons with physical or mental disabilities or diseases when the department's decision is related to the disability or disease. The disabilities or diseases dealt with in the proposed rules include: visual acuity, diabetes, mental illness and conditions resulting in loss of consciousness or voluntary control. The proposed rules include the criteria the department will use to determine the person's eligibility or ineligibility for a license pursuant to Minnesota Statutes, § 171.04 clauses (8) and (9).

The department's authority to promulgate the proposed rules is contained in Minnesota Statutes, § 15.0412, subd. 3, and ch. 171 generally.

One free copy of the proposed rules is available and may be obtained by writing to the Department of Public Safety (D.L. Rules), 211 Transportation Building, St. Paul, MN 55155. Additional copies will be available at the door on the date of the hearings.

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

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Department of Public Safety and at the Office of Hearing Examiners. The Statement of Need and Reasonableness will include a summary of all of the evidence and argument which the department anticipates presenting at the hearing, justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The department estimates that there will be no cost to local public bodies in the state to implement the rules for the two years immediately following their adoption, within the meaning of Minn. Stat. § 15.0412, subd. 7 (1980).

Please be advised that Minnesota Statutes, ch. 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minnesota Statutes § 10A.01, subd. 11 (1980) defines a lobbyist 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 Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, telephone (612) 296-5615.

The rule hearing process is governed by Minnesota Statutes, §§ 15.0411 through 15.0417 and § 15.052 and by 9 MCAR §§ 2.101 through 2.113 (Minnesota Code of Agency Rules). Questions relating to the rule hearing process and procedures may be directed to the Hearing Examiner, Jon Lunde, phone 296-5938.

John P. Sopsic
Commissioner of Public Safety

Rules as Proposed (all new material)

Chapter Nine: Standards for Administration of Driver License Laws Pertaining to Physical or Mental Qualifications

11 MCAR § 1.4092 Purpose and scope.

A. Purpose. This chapter is to set out general standards for effective administration of the driver licensing statutes relating to the issuance, restriction or denial of driving privileges with respect to persons having physical or mental disabilities under Minn. Stat. §§ 171.04; 171.13 and 171.14.

B. Scope. These rules are intended to be confined within the framework of, and consistent with, the provisions of Chapter 171 of Minnesota Statutes.

C. Definitions. When used in these rules, the following phrase shall have the following meaning: "Good cause to believe": grounds put forth in good faith which are not arbitrary, irrational, unreasonable or irrelevant and which are based on at least one of the following sources:

1. written information from an identified person
2. facts supplied by the driver or applicant
3. facts of which the commissioner or his employees or agents have personal knowledge

11 MCAR § 1.4093 Vision.

A. General. Every applicant shall submit to a vision screening or examination. The screening device, designed to screen 20/40 or better corrected vision, shall be of a type accepted by the American Medical Association.

The purpose of the vision screening is:

1. To screen each applicant to guarantee that those individuals with substandard vision are required to take the necessary steps required to achieve the best vision possible.

2. To deny driving privileges to those whose vision is likely to interfere with the safe operation of motor vehicles in traffic.

B. Corrective lenses not required. Except as otherwise provided herein, no corrective lenses will be required where the applicant:

1. scores 20/40 or better, with either one or both eyes, without corrective lenses;

2. has one eye, but scores 20/40 or better, without corrective lenses; or

3. has the recommendation of an eye specialist that corrective lenses not be worn. In these cases, the commissioner shall either require the applicant to be examined further, to impose suitable restrictions upon his driving privileges or both.

C. Corrective lens requirement. Corrective lenses shall be required in all cases when:

1. The applicant scores less than 20/40 with either one or both eyes unassisted but scores 20/40 or better with corrective lenses;

2. The applicant submits a physician's statement, in a form as may be prescribed by the commissioner, indicating that the applicant scores 20/40 or better with either eye, or both eyes together, but where the physician recommends that the applicant wear corrective lenses; or

3. The applicant is blind in one eye and scores less than 20/40 with the other eye unassisted, but scores 20/40 or better with corrective lenses.

D. Vision examinations. Any applicant shall be required to submit a vision report from a physician in a form as prescribed by the commissioner when:

1. The applicant disagrees with the results of the screening conducted by any driver examiner;

2. The applicant has cataracts;

3. The driver examiner is unable to determine the extent of the applicant's vision;

4. Any court or police officer has recommended that the applicant's vision be examined;

5. The commissioner determines, in some other situation, when he has good cause to believe that an examination is warranted;

6. The applicant has strabismus; or

7. The applicant has double vision

E. Vision restricted licenses. Applicants who score 20/50 or less corrected vision with either one usable eye or with two eyes shall, if otherwise eligible, be issued a restricted license to permit driving subject to the following restrictions:

1. Speed Restrictions

20/50	- - -	55 miles per hour
20/60	- - -	50 miles per hour
20/70	- - -	45 miles per hour

When the applicant scores 20/80 to 20/100 corrected vision, the application will be referred to the Chief Evaluator who shall determine whether a restricted license can be issued and the kinds of restrictions which are necessary to ensure that the applicant does not pose an unreasonable safety risk to himself or others. When the applicant scores 20/100 or less corrected vision, or is known to be receiving assistance for the blind, all privileges shall be denied and any existing license cancelled under authority of Minn. Stat. §§ 171.14 and 171.04 (9).

2. Restriction as to type of road. Any applicant subject to speed restrictions under Paragraph E.1. may also be restricted to those roads having a maximum speed limit equal to the maximum speed limit imposed upon the applicant, if the commissioner determines that the restriction is necessary for the safety of the applicant and the public. Any person limited to a maximum speed of 45 m.p.h. or less shall be restricted from driving on any freeway, expressway, or limited access highway with a speed limit of more than 45 m.p.h.

3. Area restrictions. Any applicant who scores 20/50 or less corrected vision with both eyes may be restricted to driving within an area to be determined by the commissioner, if the commissioner determines that the restriction is necessary for the safety of the applicant and the public.

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F. Other situations. Any vision readings or problems not covered by the above general standards shall be referred to the Chief Evaluator, who shall determine whether a restricted license can be issued and the kinds of restrictions which are necessary to ensure that the applicant does not pose an unreasonable safety risk to himself or others.

11 MCAR § 1.4094 Loss of consciousness or voluntary control.

A. General. This rule applies to all drivers and applicants for driving privileges who suffer from any paroxysmal disturbances of consciousness, including, but not limited to, epilepsy. Any person suffering from narcolepsy or syncope of any cause, as well as any other type of periodic or episodic loss of consciousness or voluntary control, is included. This rule applies regardless of whether the driver or applicant has an "aura" or warning of imminent seizure or attack or whether the driver or applicant has only had nocturnal attacks, and no exceptions shall be made for such drivers or applicants.

B. Physician's report. When the commissioner has good cause to believe that a driver or applicant suffers from any of the periods of unconsciousness mentioned in A. above, a physician's report in such form as the commissioner may prescribe shall be required within 30 days or within such reasonable time that the person may require to obtain the report from the physician. This report shall include a sworn statement from the driver or applicant as to the date of his last period of unconsciousness.

C. Criteria for cancellation. If this report is not filed, or, if upon review of the doctor's report the commissioner finds that the individual has suffered from periods of unconsciousness, with the last period of unconsciousness occurring within the last 12 months, all driving privileges shall be cancelled under the authority of Minn. Stat. § 171.14 and denied under authority of Minn. Stat. § 171.04 (9). The person shall not be issued any driving privileges until the commissioner finds that the person is competent to drive safely.

D. Criteria for reinstatement. For reinstatement the commissioner shall require a satisfactory doctor's report and a satisfactory sworn statement from the person stating the date of the last period of unconsciousness and that it occurred at least 12 months previously.

E. Review of driver's condition. Except as otherwise provided below, any driver suffering from medical conditions subject to this rule shall be required to submit an annual physician's statement in the form prescribed by the commissioner, with respect to his medical history, present situation, and the prognosis with respect to the applicant's ability to operate a motor vehicle with safety to himself and others.

1. When the commissioner has good cause to doubt the stability of the driver's condition, the commissioner shall require physician's statements every six months, or at such shorter intervals as recommended by the reporting physician.

2. After three successive annual physician's statements indicating no episodes of loss of voluntary control, while on medication, the commissioner shall require a physician's report every four years, unless the physician recommends more frequent reports.

4. When the physician's statement indicates that an episode of loss of voluntary control resulted from a change or removal of medication on the physician's orders, the commissioner will not cancel the privilege to drive. However, a physician's statement shall be required every six months until the person has been episode-free for not less than one year.

5. When the physician reports that there has been only one such episode, the procedure shall be as indicated in Paragraph E 4. above.

11 MCAR § 1.4095 Diabetes.

A. General. When the commissioner has good cause to believe that a driver or applicant has diabetes, or has experienced a loss of voluntary control due to either insulin reaction or acidosis, a physician's report shall be required within 30 days or within such reasonable time that the person may require to obtain the report from the physician. If the physician's statement is not filed, or, if upon review of the report from the physician the commissioner finds that a person cannot drive safely, all driving privileges shall be cancelled under authority of Minn. Stat. § 171.14 and denied under authority of Minn. Stat. § 171.04 (9). The person shall not be issued any driving privileges until the commissioner finds that the person is competent to drive safely. For reinstatement, the commissioner shall require a satisfactory physician's report, demonstrating the individual is competent to drive safely.

B. Insulin control. When the driver or applicant uses insulin to control diabetes, a physician's statement shall be required annually in the form prescribed by the commissioner. If the person remains free of episodes of loss of voluntary control due to insulin reaction or acidosis, for a period of 5 years, the physician's report shall be required every two years, unless the physician recommends more frequent reports. If the person remains episode-free for three of these two-year review periods, the physician's report shall be required every four years unless the physician recommends more frequent reports. If there is an episode of loss of voluntary control, the physician's report shall be required every six months, until the person has been episode-free for one year.

11 MCAR 1.4096 Mental illness or deficiency.

For the purposes of this section, good cause to believe exists only if the commissioner has:

1. information that a person has operated a vehicle in an unsafe manner, or

2. information that a person lacks judgment and coordination to safely operate a vehicle based on competent medical authority, or

3. facts supplied by the driver or applicant

When the commissioner has good cause to believe that a person is mentally ill, incompetent or deficient, and that the mental illness, incompetency or deficiency will affect the person in a manner to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating it upon the highways, a physician's statement, in such form as the commissioner may prescribe, shall be required within 30 days or in such reasonable time that a person may require to obtain a physician's statement. If the physician's statement is not filed, or, if upon review of the report from the physician the commissioner finds that a person cannot drive safely, all driving privileges shall be cancelled under authority of Minn. Stat. § 171.14 and denied under authority of Minn. Stat. § 171.04 (5) or (9). The person shall not be issued any driving privileges until the commissioner finds that the person is competent to drive safely.

For reinstatement, the commissioner shall require a satisfactory statement from any institution in which the person has been treated, from any treating physician, or from any competent medical authority acceptable to the commissioner, demonstrating that the individual is competent to drive safely.

11 MCAR § 1.4097 Miscellaneous physical or mental conditions.

A. When the commissioner has good cause to believe that any of the situations listed in B. exist, and would adversely affect the driver's or applicant's ability to drive safely, a physician's statement in such form as the commissioner may prescribe, shall be required within 30 days, or in such reasonable time that a person may require to obtain a physician's statement. If the physician's statement is not filed, or, if upon review of the statement the commissioner finds that the person cannot drive safely, all driving privileges shall be cancelled under authority of Minn. Stat. § 171.13 (4) or Minn. Stat. § 171.14 and denied under authority of Minn. Stat. § 171.04 (9).

The person shall not be issued any driving privileges until the commissioner finds that the person is competent to drive safely.

B. Situations covered by paragraph A. are:

1. Use of any medication, whether or not prescribed.

2. Any disease that raises reasonable doubts as to the person's ability to drive safely.

3. Use of alcohol or controlled substances.

4. Lack of physical control, such as that manifested by fainting or dizzy spells, blackouts or periods of unconsciousness.

5. Lack of physical endurance, such as that manifested by a person subject to fatigue, exhaustion, nervous tension, or adverse reaction to monotony.

6. Abnormal reflexes, such as those manifested by persons suffering from cerebral palsy, multiple sclerosis, Parkinson's disease, or similar conditions.

C. When the commissioner has good cause to doubt the adequacy of the driver's or applicant's ability to safely operate a vehicle under the conditions listed in D., a driver's license examination shall be required within 30 days or within such reasonable time that a person may need to obtain a driver's test. If the driver's test is not satisfactorily completed within 30 days, or in such reasonable time as the person may require to obtain an examination, all driving privileges shall be cancelled under the authority of Minn. Stat. § 171.13 and denied under the authority of Minn. Stat. § 171.04.

For reinstatement, the commissioner shall require proof of satisfactory completion of the driver's test.

D. Conditions covered by paragraph C. are:

1. driving procedures

2. judgment of space, time and motion

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3. physical strength to operate a vehicle's controls

4. physical condition to operate a vehicle

11 MCAR § 1.4098 Other restricted licenses.

A. When a person has failed, after three attempts, to pass the driver's license examination, but can establish a genuine need to be able to drive, he may apply for a restricted license.

All such applications shall be referred to the Chief Driver Evaluator. The applicant must undergo examination by an examining supervisor, who shall determine the risk involved, and forward his/her written recommendations, including, when applicable, suggested basic restrictions, to the Chief Driver Examiner for forwarding to the Chief Driver Evaluator. The Chief Driver Evaluator shall review the entire record and determine whether any driving privileges may be authorized.

B. Any restricted licenses issued shall be subject to cancellation whenever the commissioner determines that the person has violated the restrictions imposed. The commissioner may notify local law enforcement agencies of the issuance of any special restricted license and of the restrictions involved. Any report of a violation of the restrictions shall be referred to the Chief Driver Evaluator for consideration. Any conviction indicating a violation of the restrictions shall result in cancellation. After cancellation no driving privileges may be allowed until the commissioner determines that the licensee can be trusted to operate within the restrictions imposed. Any reinstatement may be conditioned upon compliance with additional restrictions for such period as the commissioner may direct.

11 MCAR § 1.4099 Medical review board.

A. A medical review board shall be established for each of the various general types of physical and mental qualifications dealt with by these rules. Each medical review board shall consist of one or more licensed physicians nominated by the state medical association. The physicians shall preferably be specialists in the area to which the problem relates.

B. When a person disagrees with the determination of the commissioner, he may apply, in writing, for a variance from rules to . Any applicant applying for a variance shall have his treating physician or physicians provide the Commissioner with a complete medical history relating to the condition in question, together with good medical reasons why a variance should be granted. The commissioner shall then forward to the appropriate medical review board all information submitted by the applicant together with the commissioner's records relating to the matter. Each physician on the review board shall review the file and make his recommendation to the chairman of the review board, who shall communicate the recommendation of the board, whether unanimous or divided, to the commissioner.

Upon receipt of the recommendation of the review board, the commissioner shall reconsider the application, take whatever action he then deems appropriate, inform the driver or the applicant of his decision, and, if the decision differs from the recommendation of the review board, of the reasons for the decision.

This decision shall be reached and the applicant informed of the decision within 60 days of the request for a variance.

Board of Teaching

Proposed Rule Governing Procedures for the Issuance of Life Licenses

Notice of Hearing

A public hearing concerning the proposed rule will be held at Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota 55155 on May 30, 1981, commencing at 9:00 a.m. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, 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 Richard C. Luis, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, MN 55104, telephone (612) 296-8114 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 §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have questions about the procedure, call or write the hearing examiner.

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 Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the

reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The board's authority to promulgate the proposed rules is provided by Minn. Stat. § 125.05, subd. 1 (1980) and Minn. Stat. § 125.185, subd. 4 (1980).

The board estimates that there will be no cost to local bodies in the state to implement the rule for two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

A copy of the proposed rule is attached hereto. One free copy may be obtained by writing to Kenneth L. Peatross, 608 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101. Additional copies will be available at the door on the date of the hearing. If you have any questions on the content of the proposed rule, contact Kenneth L. Peatross.

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

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 (1979 Supp.) 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 one 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, MN 55155, telephone (612) 296-5615.

March 13, 1981

Kenneth L. Peatross, Executive Secretary
Board of Teaching

Rule as Proposed (all new material)

5 MCAR § 3.002 Procedures for the issuance of life licenses. Any teacher currently holding a valid license to teach granted by the Minnesota Board of Teaching have a minimum of five years teaching experience in Minnesota, who was actually employed as a classroom teacher or other similar professional employee on a regular contract in any one of three years immediately preceding July 1, 1969, may apply for and receive a life license for those grades, subjects, and fields for which Minnesota licensure was held prior to July 1, 1969, upon payment of a processing fee of twenty dollars ($20.00). The application period to apply for a life license according to the provisions of this rule shall expire July 1, 1982. The application shall be in writing on a life license application form addressed to:

Minnesota State Department of Education
Personnel Licensing Section
Sixth Floor, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

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Life license application forms may be obtained from:

Minnesota State Department of Education
Personnel Licensing Section
Sixth Floor, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2046

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota
Ramsey County

Tax Court
Regular Division

Bituminous Roadways, Inc.,

Appellant,

v.

The Commissioner of Revenue,

Appellee.

In the Matter of the Appeal from the Commissioner's Order dated August 23, 1974, and his Order dated February 4, 1977, relating to Use Tax of Bituminous Roadways, Inc., for the taxable period ending 1973 and 1976.

Docket Nos. 2082 & 2399

Order dated April 7, 1981

The above entitled matters came on for hearing before the Honorable John Knapp, Chief Judge of the above named Court, in the Tax Court hearing room at 444 Lafayette Road, St. Paul, Minnesota, on December 11, 1978.

Gordon Rosenmeier, Attorney at Law, 72 Broadway, Little Falls, Minnesota, and Robert C. Hoene, Attorney at Law, 1004 Degree of Honor Building, St. Paul, Minnesota, appeared for and on behalf of the appellant. Thomas K. Overton, Special Assistant Attorney General, Department of Revenue, Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota, appeared for and on behalf of the appellee.

After numerous extensions of time to allow for negotiations and to await the decisions of the Minnesota Supreme Court in other cases involving issues related to the issues herein, a stipulation was filed on July 23, 1979, reducing the amount of the assessment against the appellant. Oral arguments were heard by the Honorable John Knapp, on May 13, 1980, at the above address.

By an order dated August 23, 1974, for the taxable period July 1, 1971, to and including December 31, 1973, and an order dated February 4, 1977, for the taxable period January 1, 1974, through June 30, 1976, the commissioner assessed against the appellant a total $40,646.90 in additional sales and use taxes under Minnesota statute 297A.14. A timely appeal was filed for each of the above orders and the appeals were consolidated for trial. A chief issue is whether or not a sales price of bituminous mix includes the total consideration paid for the bituminous mix or only the cost of raw materials used in making the bituminous mix.

By negotiations and agreement embodied in a written stipulation, the additional tax claim was reduced to $31,224.15. A portion of that amount is not disputed by the taxpayer but there is an error in the calculations in paragraph 3 of the stipulation dated July 20, 1979, so the Court is not clear as to the exact amount in dispute.

Decision

The Order of the Commissioner of Revenue as modified by the stipulation, subject to correction of the error in calculation, is hereby affirmed.

From the testimony adduced at the trial and from the files, records, and proceedings herein, including transcripts and the stipulation of facts, entered into between the parties hereto, the Court makes the following:

Findings of Fact

1. Appellant is in the asphalt paving business. Sometimes it acts as a contractor and sometimes as a sub-contractor in construction of roads, driveways, parking lots, tennis courts, pathways, and other similar projects.

2. Appellant has its own bituminous mixing plant. It uses bituminous mix from its plant and also sells bituminous mix from its plant to other contractors. Bituminous mix is a compound of asphalt cement mixed with a gravel aggregate at a hot mixing plant.

3. When appellant needs more bituminous mix than its own plant can provide or when appellant requires paving materials which it cannot produce, appellant purchases such paving materials from others. During the years in issue most such purchases were made from Midwest Asphalt, Inc. When Midwest Asphalt, Inc. sold bituminous mix to the appellant, it collected a sales tax from the appellant based on the value of the ingredients but not on the value of blending those ingredients in the production of road building materials included in the invoiced price.

4. The sales tax paid by the appellant to Midwest Asphalt, Inc. was passed along to the customer by including it as part of the cost of the materials. It was not stated as a separate item on the invoice to the customer and the appellant did not remit a separate tax to the state.

5. After an audit of the appellant, the commissioner levied a use tax based on the omitted value calculated on the gross receipts at the plant of Midwest Asphalt, Inc. from sales of road building materials to appellant.

6. The appellant used all of the purchased paving materials to improve real estate. In all cases where the appellant purchased paving materials, appellant was acting as a contractor or sub-contractor and actually placed the bituminous mix on real estate owned by others.

7. When the Commissioner of Revenue assessed the use tax on appellant's use of paving material, credit was given for any sales tax already paid on each transaction.

8. During the period in question, appellant sold some bituminous mix produced in its own plant to various other purchasers. Appellant did not charge or remit sales tax on those sales. After audit, the commissioner assessed a sales tax on those sales.

9. For the purposes of discussion and ease of reference, the parties segregated the various transactions involved in this appeal into eleven separate categories, as follows:

1. Private roads on which the appellant was prime contractor.
2. Private parking lots and driveways on which the appellant was prime contractor.
3. Private roads on which the appellant was sub-contractor.
4. Private parking lots and driveways on which the appellant was sub-contractor.
5. Non-roads constructed for tax exempt entities on which the appellant was sub-contractor.

5A. Roads constructed for tax exempt entities on which the appellant was sub-contractor.

6. Non-roads constructed for tax exempt entities on which appellant was prime contractor.

6A. Roads constructed for tax exempt entities on which appellant was prime contractor.

7. Purchases for re-sale by the appellant.
8. Sales by appellant — sold to others for re-sale.
9. Crushing costs on appellant's own material.

10. With regard to the transactions with tax exempt entities shown in categories 5, 5A, 6 and 6A, there was no evidence to the effect that the buyer purchased the bituminous mix from the appellant and put it in place with its own equipment and labor force. Rather, it appears that in most instances the appellant not only delivered the bituminous mix to the site but also put it in place and was paid either a lump sum or a unit price per ton which included the cost of putting it in place.

11. The headings for categories 7 and 8 are inaccurate, in that they would tend to indicate that there was a subsequent sale. From the testimony of appellant's own witness, it appears that all of the purchases included in category 7 were purchases made by the appellant and consumed by the appellant in its own construction projects for others. It also appears that very few, if any, of the transactions listed in category 8 were sales for re-sale and that if they were sales for re-sale, proper credit was given in the audit.

Conclusions of Law

1. The sale of paving materials to a contractor who uses it to repair or improve real estate is a retail sale.

2. The use of paving materials by a contractor to improve real estate is "use" within the meaning of the sales and use tax law § 297A.01, subd. 6.

3. The industrial production exemption, § 297A.25, subd. 1(h), applies as follows:

a. As amended by Minnesota Laws 1973, c. 75, the exemption does not apply to any of the transactions here in question.

b. As it existed prior to its amendment, the exemption applies to materials used in road building. Road building does not include the building of driveways, parking lots, tennis courts or running tracks.

4. The "sales price" of bituminous mix includes the total consideration paid for the bituminous mix, not only the cost of the raw materials used in making bituminous mix.

5. The sales by appellant of bituminous mix are retail sales subject to sales tax. § 297A.09.

6. Appellant owes a "use" tax on its purchases of bituminous mix and other paving materials.

7. Appellant owes sales tax on its sales of bituminous mix and other paving materials.

8. The additional tax is to be computed as follows:

For the purpose of computing the judgment amount in accord with the stipulation of the parties, the foregoing findings and conclusions, and to correct a transaction shown at trial to be subject to use tax rather than sales tax.

A. Use tax is due on the amount stipulated as taxable by the parties in paragraph 3 of the stipulation filed by the parties.

B. Use tax is not due upon the amount stipulated as non-taxable by the parties in paragraph 3 of the stipulation.

C. Of the disputed amounts (shown in Exhibits 7 & 8):

(a) Use tax is due upon the gross amounts shown taxable in columns 1-7 of Exhibits 7 & 8.

(b) Use tax is due upon any purchased materials used in the Schoell-Madison, Inc. contract shown in column 8 of Exhibits 5 & 7. Testimony at trial showed this to be a situation identical to those in (a) above. A corresponding reduction in sales tax is made in (c) below.

(c) Sales tax is due upon the gross amounts listed in column 8 of Exhibits 7 & 8, except the $1,924.70 amount of the Schoell-Madison, Inc. construction contract. This was appellant's construction project rather than a sale.

Order for Judgment

The order of the Commissioner of Revenue assessing additional sales and use tax is hereby affirmed subject to amendment as per stipulation of the parties and subject to further correction of the mathematical error.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF FIFTEEN DAYS IS HEREBY ORDERED.

Minnesota Tax Court
John Knapp, Chief Judge

Memorandum

Appellant, Bituminous Roadways, Inc., is an asphalt paving contractor. It has its own bituminous mixing plant but occasionally purchases additional paving materials from other sources. Most of the transactions in question are purchases of bituminous mix by appellant from Midwest Asphalt, Inc. This material was used by appellant in completing various paving contracts for a number of different customers both public and private. These paving projects included driveways, parking lots, road and street repair, and tennis courts.

Appellant paid a sales tax on most of these purchases, usually based on the cost of the ingredients in the mix and not on the entire sale price. The commissioner assessed a use tax based on the sale prices and gave appellant credit for any sales tax actually paid.

Also during the period in question, appellant sold bituminous mix produced in its own plant to several different purchasers and did not charge or remit any sales tax on these sales. The commissioner assessed a sales tax on these transactions.

The threshold question is whether the purchases of bituminous mix made by appellant for use in completing various paving contracts were "retail sales" subject to the sales tax. It seems rather anomalous that appellant, after paying a sales tax on the cost of the materials, now claims these sales are not taxable. Nevertheless, we will attempt to consider and rule on all arguments

raised. The basic contention appellant makes is that there can be two successive "retail sales" or two-level transactions with the first sale not taxable and the second one subject to tax, if not otherwise exempt. This would mean that appellant's original purchases of paving mix would be "retail sales" but not, however, sales subject to the sales or use tax. Appellant further argues that when the paving mix was laid down in completion of appellant's paving contracts, these would be another and second "retail sale" exempt, however, because they were either sales to tax exempt public entities or exempt as "road building" under Minnesota Statute § 297A.25, subd. 1(h).

We disagree with appellant's first and fundamental contention that the Minnesota sales and use tax recognizes more than one "retail sale" as personal property moves from manufacturer or processor to the ultimate consumer. Chapter 297A clearly was intended to tax only the sale to the ultimate consumer who purchases tangible personal property.

Minnesota Statute § 297A.02 imposes a sales tax of four percent on "sales at retail."

Minnesota Statute § 297A.01, subd. 3 defines a "sale" as "any transfer of title or possession, or both, of tangible personal property . . . for a consideration in money. . . ."

Minnesota Statute § 297A.01, subd. 4 defines a "retail sale" or "sale at retail" as a "sale for any purpose other than resale in the regular course of business."

In the event a sales tax is not collected, Minnesota Statute § 297A.14 imposes a use tax of four percent of the gross sales price.

Appellant, ordinarily, would be exempt from both the sales and use tax if its original purchases from its suppliers are sales for resale in the regular course of its business.

Here it purchased the bituminous mix, not for resale but to improve real estate in completion of its paving contracts. This brings it within Minn. Statute 297A.01, subd. 4 which defines sales to contractors as "retail sales." The pertinent statutory language reads:

Sales of building materials, supplies . . . to owners, contractors, sub-contractors or builders for . . . improvement of real property are "retail sales" or "sales at retail."

In *Emil Olson, Inc. v. Commissioner*, Minn. Tax Court #2332, 1978, we held that sales of gravel to contractors for road building should be considered "retail sales" because they could not be considered sales for resale. On appeal, the Minnesota Supreme Court affirmed and found the sale of gravel to contractors who used the product to construct roadbeds (an improvement of real property) were sales at retail under Minn. Statute 297A.01, subd. 4.

Since under Minn. Stat. 297A.01, subd. 4 (1978) it is clear that the sales to the contractors involved in this case are "at retail," we necessarily conclude that the contractors are retail purchasers . . . *Emil Olson, Inc. v. Commissioner*, 293 N.W. 2d 831, 834 (1980).

The statute reflects and we accept the legislative determination that construction contractors, including paving contractors, are the ultimate consumers of the building materials and supplies that are used to improve real property. *County of Hennepin v. State of Minnesota*, 263 NW, 2d 639 (1978).

Appellant is obliged to pay the use tax assessed after being given credit for the sales tax already paid. This tax is computed on the total consideration paid not just the cost of the ingredients. Minn. Stat. § 297A.14.

The next issue to consider is appellant's claim that these purchases are exempt under Minn. Stat. § 297A.25, subd. 1(h) as material used or consumed in industrial production of personal property.

Before April 2, 1973, this exemption applied to material used in road building. *Oster & Pederson, Inc. v. Commissioner*, 266 N.W. 2d 162 (1978). By Minnesota Laws 1973, c. 75, c. 1, effective April 2, 1973, the exemption was limited to the sale and use of materials used in "the production of road building materials."

The commissioner agrees that purchases of paving mix made by appellant before the 1973 amendment and used in road building are exempt. The disagreement between the parties arises over what constitutes road building. Appellant claims it includes the use of the bituminous mix in any type of paving such as parking lots, driveways and tennis courts. We agree with the commissioner that a "road" is "a public way to travel" and that driveways, parking lots and tennis courts are not roads and material used in paving them is not "road building" and therefore not exempt. *Biaconi Construction Company v. Commissioner*, Tax Court Docket #2461 (2-27-81).

After Minnesota Stat. § 297A.25, subd. 1(h) was amended in 1973 the exemption reads in pertinent part as follows:

The gross receipts from the sale of and the storage, use, or consumption of all materials . . . used or consumed in . . . industrial *production of personal property intended to be sold ultimately at retail . . . Such production shall include*, but is not limited to, production of any tangible personal property, manufacturing, processing (other than by restaurants and consumers)

of agricultural products whether vegetable or animal, commercial fishing, refining, smelting, reducing, brewing, distilling, printing, mining, quarrying, lumbering, generating electricity and the *production of road building materials*. (Emphasis added)

Thus the exemption, by its own terms, applies only to materials used or consumed in the "production of road building materials" and has no application in this case. Appellant did not purchase this paving mix to be used in the production of personal property intended to be sold ultimately at retail. This "industrial production" exemption only applies to materials used or consumed in the production process. The production, manufacturing or processing of bituminous mix had been completed when appellant made its purchases.

In *Emil Olson, Inc. v. Commissioner*, Minn. Tax Court #2332 (1978) we held that the sale of road construction material to contractors who use the materials to repair or improve roads was not exempt under subdivision 1(h). This was affirmed by the Minnesota Supreme Court. In *Emil Olson, Inc. v. Commissioner*, 293 N.W. 2d 831 (1980) the Court discussed subdivision 1(h) and said:

This provision does not apply to the sales involved in this case. The exemption speaks in terms of "industrial production of personal property intended to be sold ultimately at retail . . ." The crushed gravel transferred to the contractors by realtor is not used to produce personal property to later be sold at retail, but rather, the product is used to improve real property. Thus, the exemption is not available.

The appellant further claims that it is exempt from the use tax if the real estate improved is owned by a tax exempt entity. This issue has been settled in Minnesota by *Hennepin County v. State*, 263 N.W. 2d 639 (1978) which held a contractor liable for use tax on building materials used to improve realty for an exempt owner. Accord, *Christenson Corporation v. Commissioner*, Minnesota Tax Court #2536 (March 18, 1980).

Appellant also argues that the Commissioner cannot collect a use tax from the purchaser and user of property but is limited to an action to collect the sales tax from the seller. This question has also been rejected by this Court and the Minnesota Supreme Court. *Oster & Pederson, Inc. v. Commissioner*, Minn. Tax Court #1914 (March 30, 1976) aff'd, 266 N.W. 2d 162 (1978).

Finally, there remains the proper treatment of those sales where appellant produced bituminous mix in its own plant and sold this mix to customers without collecting a sales tax. No evidence was presented that these sales were sold to an exempt party. Appellant, acting as a retailer in these cases, is obliged to collect a sales tax. Minn. Statute 297A.09 provides that all sales are presumed to be retail sales subject to the sales tax until the contrary is established. Appellant is therefore liable.

For the reasons stated, the commissioner's Order should be affirmed.

SUPREME COURT

Decisions Filed Friday, April 10, 1981

Compiled by John McCarthy, Clerk

50993/Sp. Shirley Roemer, *et al.*, v. Vincent Eversman, *et al.*, Appellants. Wabasha County.

Because appellant's affidavit raised an issue of material fact and the pleadings, affidavits, and interrogatories failed to establish all of the elements of an adverse possession claim, the trial court's granting of a motion for summary judgment was inappropriate.

Reversed. Sheran, C. J.

51535/11 Anastasia Kroll, Appellant, v. Independent School District No. 593. Polk County.

Although local boards of education are not required to adhere to the formal rules of evidence, the seriousness of teacher termination proceedings mandates some limits upon the testimony that may be considered to have probative value. In this case, in which discrepancies in the testimony of several witnesses are both numerous and highly variable, the testimony cannot constitute substantial evidence of the precise factual finding that was made.

In determining whether to terminate a teacher for "conduct unbecoming a teacher" under Minn. Stat. § 125.12, subd. 8 (1980) rather than Minn. Stat. § 125.12, subd. 6 (1980), the school board must find that the conduct is not remediable. This determination must take into account the teacher's record as a whole, the severity of the conduct in light of the teacher's record, and the actual impact of the conduct upon the teacher's students.

Reversed. Sheran, C. J. Took no part, Scott, J.

49416/438 Jack Frost, Inc., v. Engineered Building Components Company, Inc., defendant and third-party plaintiff, Foley Fuel and Lumber Company, Inc., defendant and third-party plaintiff, v. Hydro-Air Engineering, Inc., third-party defendant, Appellant. Morrison County.

The trial court was correct in granting plaintiff's post-trial motion to amend the pleadings to make Hydro-Air Engineering, Inc., originally a third-party defendant, a direct party defendant where Hydro-Air Engineering, Inc. impliedly consented to trial of the issue of its liability to plaintiff. Minn. R. Civ. P. 15.02.

The evidence adduced at trial was sufficient to support the jury's findings that defendant designer was negligent in designing the product, that defendant designer had supplied defendant manufacturer of the product with a defective design for the product, and that defendant designer's negligence was a direct cause of 55% of plaintiff's loss.

Defendant designer is liable to plaintiff for 70% of the damages assessed by the jury.

The trial court did not abuse its discretion when it decided that the misconduct of counsel for defendant manufacturer did not necessitate a new trial.

Defendant retailer is not entitled to recover attorneys fees from defendant manufacturer where defendant retailer was required to defend claims of plaintiff arising out of defendant retailer's own wrongful conduct and failed to tender defense of the action to defendant manufacturer.

Affirmed. Peterson, J. Took no part, Otis, J., Amdahl, J., and Simonett, J.

50646
50647/Sp. Harvey Johannsen v. Minnesota Valley Ford Tractor Co., Inc., Appellant (50647), Ford Motor Company, Inc., Appellant (50646). Freeborn County.

Buyer's seasonable revocation of acceptance because of a defect which substantially impairs the value of the good to buyer is not made ineffective by his failure to allow seller an opportunity to cure the defect.

Buyer's use of defective good after revocation does not constitute a second acceptance where the finder of fact finds that the continued use is reasonable.

The trial court did not err in the exclusion of an alleged warranty.

Affirmed. Peterson, J.

51258/Sp. State of Minnesota v. William J. Snipe, Jr., Appellant. Hennepin County.

Evidence of defendant's guilt of aggravated robbery was sufficient.

Trial court may admit evidence relating to a criminal defendant's financial condition or employment status if the evidence is relevant, unless the potential of the evidence for unfair prejudice substantially outweighs its probative value; *held*, trial court in this case did not clearly abuse its discretion in admitting such evidence.

Affirmed. Simonett, J.

Decision Filed Wednesday, April 1, 1981

51950
51958/Sp. In the Matter of the Welfare of Kelly Patrick Hartung. Hennepin County.

Juvenile court's stay of certification of order and placement of juvenile in formal treatment program pending immediate appeal by juvenile of the certification order did not constitute a disposition for double jeopardy purposes when the placement was at the juvenile's request and where the juvenile at the time expressly waived any claim that the placement was a disposition for double jeopardy purposes.

Juvenile court at second reference hearing, conducted after this court reversed earlier reference order and remanded for new reference hearing, properly admitted evidence of present conditions bearing on whether certification was necessary and properly determined that public safety would not be served by an attempt to treat the juvenile in the juvenile justice system.

District court judge properly denied motion by juvenile for order compeling prosecutor to present allegedly exculpatory evidence to grand jury if and when prosecutor presented case to grand jury for consideration.

Reference order affirmed; petition for writ of mandamus denied.

Sheran, C. J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Corrections Health Care Unit

Notice of Request for Proposals for Medical Services Contracts

Notice is hereby given that the Minnesota Department of Corrections is seeking the following services for the period July 1, 1981 through June 30, 1982. These services are to be performed at the indicated state correctional institutions.

1. Services of a Pharmacist for the Minnesota Correctional Facility-Stillwater on a full time basis and the Minnesota Correctional Facility-Shakopee approximately 14 hours/week to supervise the total pharmacy program. The estimated amount of the contract will not exceed $38,537.

2. Services of a Radiologist approximately 32 hours per month to provide full radiological services to Minnesota Correctional Facility-Stillwater. The estimated amount of the contract will not exceed $23,711.

3. Services of a Registered Dietitian approximately 88 hours per month to provide the total consultant dietitian services at the Minnesota Correctional Facilities-Stillwater and Lino Lakes. The estimated amount of the contract will not exceed $15,444.

4. Services of a Psychiatrist approximately 64 hours per month to provide psychiatric consultations at the Minnesota Correctional Facility-Stillwater and the in-patient Mental Health Unit. The estimated amount of the contract will not exceed $50,345.

Direct inquiries for the above listed contracts to Clyde Eells, Health Services, Minnesota Correctional Facility-Stillwater, Stillwater, Minnesota 55082.

5. Services of a Psychiatrist approximately 20 hours per month to provide psychiatric consultation services to the Minnesota Department of Corrections' Mental Health Unit located at the Minnesota Correctional Facility-Stillwater. The estimated amount of the contract will not exceed $12,840. Direct inquiries to Dr. Kenneth Carlson, Ph.D., Mental Health Unit, Minnesota Correctional Facility-Stillwater, Box 55, Stillwater, Minnesota 55082.

6. Services of a Behavior Therapist to provide: psychological evaluations including a performance evaluation prediction on sex offenders for the Minnesota Corrections Board; general consultation services to the Minnesota Corrections Board; and therapy services to inmate sex offenders. Estimated amount of the contract will not exceed $14,083.

Direct inquiries to Mrs. Dorothy Skwiera, Minnesota Corrections Board, Suite 238, Metro Square Building, St. Paul, Minnesota 55101.

Proposals for the above listed contracts must be submitted no later than May 8, 1981.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Metropolitan Council

Public Hearing on the Community Development Block Grant Application Review Guidelines and Housing Assistance Plan Review Guidelines

The Metropolitan Council will hold a public hearing on Monday, May 11, 1981 at 4:30 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, St. Paul, Minnesota 55101, on the draft community development block grant application review guidelines and housing assistance plan review guidelines. All interested persons are encouraged to attend the hearing and offer comments. Persons wishing to speak may register to do so in advance by contacting the council's public hearing coordinator at 291-6421. Those registering first will be scheduled first. Written comments may also be submitted until May 18th, 1981, to Nancy Reeves of the council staff. Copies of the draft community development block grant application review guidelines and housing assistance plan review guidelines are available free of charge from the council's Public Information Office at 291-6464.

Metropolitan Council

Public Hearing on Amendment to the Air Quality Control Plan for Transportation

The Metropolitan Council will hold a public hearing on Thursday, May 14, 1981, at 2:00 p.m. in the Council's Chambers at 300 Metro Square Building, 7th & Robert Streets, St. Paul, MN on an amendment to the Air Quality Control Plan for Transportation. The amendment addresses attainment of air quality standards for carbon monoxide in the vicinity of the intersection of Snelling and University Avenues in St. Paul, MN. All interested persons are encouraged to attend the hearing and offer comments. Persons wishing to speak may register to do so in advance by contacting the council's public hearing coordinator at 291-6421. Those registering first will be scheduled first. Written comments may also be submitted until May 25, 1981, to Lynne Takemoto of the Council staff. Copies of the proposed amendment are available free from the Council's Public Information Office at 291-6464.

Charles Weaver, Chairman
Metropolitan Council

Metropolitan Council

Proposed Changes to the Guidelines for Ranking Subsidized Housing Proposals

The Metropolitan Council will hold a public hearing on Monday, May 11, 1981 at 4:00 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, St. Paul, Minnesota 55101, on the proposed changes to the guidelines for ranking subsidized housing proposals. All interested persons are encouraged to attend the hearing and offer comments. Persons wishing to speak may register to do so in advance by contacting the council's public hearing coordinator at 291-6421. Those registering first will be scheduled first. Written comments may also be submitted until May 18, 1981, to Nancy Reeves of the council staff. Copies of the proposed changes to the guidelines for ranking subsidized housing are available free of charge from the council's Public Information Office at 291-6464.

Pollution Control Agency

Notice of and Order for Consolidated Hearing Regarding the Applications by the City of Floodwood and the City of Meadowlands for A Phosphorous Variance from 6 MCAR § 4.8027 for Wastewater Treatment Facilities

It is hereby ordered and notice is hereby given that a consolidated contested case hearing concerning the above-entitled matter will be held by the Minnesota Pollution Control Agency (MPCA) pursuant to Minn. Stat. chapters 115 and 116 (1980) and 6 MCAR §§ 4.8027 and 4.8036 on Wednesday, May 20, 1981, at the City Hall Chambers, City Hall, Floodwood, Minnesota 55736, commencing at 7 p.m. If necessary, the hearing will be continued at 9 a.m. on Thursday, May 21, 1981, at the same

location and thereafter until adjournment. However, since it is not certain that it will be necessary to continue the hearing, those who want to participate should attend the evening hearing on May 20, 1981.

The Minnesota Pollution Control Agency is authorized to hold a consolidated hearing on two or more matters pursuant to 6 MCAR §§ 4.3009 I. and 4.8036 K.3.

The City of Floodwood, City Hall, Floodwood, Minnesota 55736, and the City of Meadowlands, Minnesota 55765, have applied for variances for an indefinite period of time from 6 MCAR § 4.8027, which establishes an effluent phosphorus concentration of one milligram per liter for effluents discharged to the intrastate waters of the Lake Superior basin. The City of Floodwood and the City of Meadowlands currently operate separate wastewater treatment facilities, each consisting of primary and secondary waste stabilization ponds. The Floodwood facility is located in the SW½ of the NW¼ of Section 7, Township 51 N, Range 20 W in St. Louis County, and discharges treated domestic wastewater at an average rate of approximately .106 million gallons per day (mgd) into the Savanna River, a tributary to the St. Louis River. If the variance is granted for the Floodwood facility, the annual mean effluent phosphorous concentration will be, based on past operating data, approximately 2.86 milligrams per liter. The Meadowlands facility is located in the SW¼ of the NE¼ of Section 22, Township 53N, Range 19 W in St. Louis County, and discharges treated domestic wastewater at an average rate of approximately .024 mgd into a creek to the White Face River and thence to the St. Louis River. If the variance is granted for the Meadowlands facility, the annual mean effluent phosphorous concentration, based on past operating data, will still be within the standard of one milligram per liter; however, the Meadowlands facility does have periodic excursions over the one milligram per liter standard, and these excursions would be allowed by the variance.

The Director of the MPCA has made a preliminary determination to recommend to the board of the MPCA that the requested variances be granted and that the NPDES/SDS permits for each city be modified by incorporating the variances.

The purpose of the hearing is to determine whether the variances should be granted and, if so, whether the permits should be modified by incorporating the variances. The major issues to be addressed at the hearing, as identified in the requests for the variances, are: 1) the economic burden of compliance with 6 MCAR § 4.8027; and 2) whether the granting of the variance would result in any detrimental impact to Lake Superior. In addition, such other issues as are germane to the environmental impact of the requested variances and the operation of the facilities, as may be determined during the course of a pre-hearing conference, may be addressed at the hearing.

Please be advised that these issues may, without further notice, be modified and/or amended by the Hearing Examiner during the prehearing conferences. Additionally, prehearing conferences may result in the establishment of foundation for witnesses and exhibits. A prehearing conference is currently scheduled for May 6, 1981, at 9:30 a.m., through a telephone conference call. Those interested in participating in the prehearing conference should be either at the office of Steve Ario, City Engineer, City Hall, Floodwood, Minnesota 55736, telephone: (218) 476-2751, representative for the City of Floodwood; Carl Etter, Meadowlands, Minnesota 55765, telephone: (218) 427-2358, representative for the City of Meadowlands; or John C. Bjork, 1935 West County Road B-2, Roseville, Minnesota 55112, telephone: (612) 296-7771, attorney for MPCA Staff. If others want to be included in the telephone conference call, they should contact by May 5, 1981, Mr. Allan W. Klein at the address and phone number noted below.

The hearing will be held before Mr. Allan W. Klein, Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone: (612) 296-8104, a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel, themselves, or any other representative of their choice, if not otherwise prohibited as the unauthorized practice of law. The hearing will be conducted pursuant to the procedures set out in Minn. Stat. §§ 15.0411 through 15.052, 9 MCAR §§ 2.201 through 2.299 (Office of Administrative Hearings Contested Case Rules), and 6 MCAR §§ 4.3001 through 4.3013 (Minnesota Pollution Control Agency Rules of Procedure), to the extent the latter rules do not conflict with the former rules.

The above-cited procedural rules are available for inspection at the Office of Administrative Hearings and the MPCA or may be purchased from the State Register & Public Documents Division of the Department of Administration, 117 University Avenue, Saint Paul, Minnesota 55155, telephone: (612) 296-2874.

The applicants, the City of Floodwood and the City of Meadowlands, are parties to the hearing at the present time, pursuant to 6 MCAR § 4.3009. In addition, the MPCA Staff intends to file a Petition to Intervene as a party. Any other person wishing to become a party to the hearing must file a Petition to Intervene with the Hearing Examiner pursuant to 9 MCAR § 2.210 on or before May 5, 1981, and a copy must be served on all existing parties and the MPCA. The Petition may be filed after May 5, 1981, if there is good cause for the petitioner's failure to file the Petition in a timely manner. The Petition must show how the petitioner's legal rights, duties, or privileges may be determined or affected by the contested case, and shall set forth the grounds and purposes for which intervention is sought and indicate the petitioner's statutory right to intervene if one should exist. The name and address of the Hearing Examiner and the names and addresses of counsel and representatives of the City of Floodwood, the City of Meadowlands, and the MPCA Staff are noted above.

In the absence of a Petition to Intervene, any person at the hearing will nevertheless be allowed to offer testimony and introduce exhibits, note his appearance or question witnesses, but no person shall become, or be deemed to have become, a party by reason of such participation. Persons offering testimony or exhibits may be questioned by parties to the hearing.

All persons are advised that no factual information or evidence which is not part of the hearing record shall be considered by the Hearing Examiner of the MPCA in determination of the above-entitled matter. Persons attending the hearing should bring all factual information or evidence bearing on the case which they wish to have included in the record.

The applications for the variance and other documents related to this matter may be inspected and copied any time between 8:30 a.m. and 4 p.m., Monday through Friday, at the Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113, telephone: (612) 296-7217; or at the Minnesota Pollution Control Agency, Regional Office, 1015 Torrey Building, Duluth, Minnesota 55802, telephone: (218) 723-4660.

Questions concerning the issues raised in this Notice of and Order for Hearing or concerning informal disposition or discovery may be directed to Special Assistant Attorney General John C. Bjork at the address and phone number noted above.

All persons are advised that, if they intend to appear as parties at the hearing, a Notice of Appearance form must be completed and returned to the Hearing Examiner within twenty (20) days of the date of service of the Notice of and Order for Hearing. The Notice of Appearance from may be obtained from Special Assistant Attorney General John C. Bjork at the address and phone number noted above. SHOULD A PARTY FAIL TO APPEAR AT THE HEARING, THE ISSUES SET OUT IN THIS ORDER MAY BE DEEMED PROVED, with the consequence that the requested variance may be granted and the proposed permit may be issued in its present form.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner as soon as possible but, in any event, at least five days prior to the hearing. A copy of the request must be served on the MPCA and all other parties.

April 13, 1981.

Louis J. Breimhurst
Executive Director

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agencies

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Committees, and 2 members of the House are appointed by the Speaker of the House. Quarterly meetings; members receive $35 per diem plus expenses. For specific information contact Citizens' Committee on Voyageurs National Park, 205-4th Ave., International Falls 56649; (218) 283-3507.

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ADVISORY TASK FORCE FOR UNIFORM STANDARDS FOR STUDENT REPORTING has one vacancy for a public school employee whose position involves activities related to student reporting. The task force makes recommendations to the Legislature on policy standards for school district reporting of student data. Members are appointed by the Commissioner of Education, a representative appointed by the Minnesota Educational Computing Consortium, and a representative of the regional management information centers; members also appointed by the Board of Education. For specific information contact Advisory Task Force for Uniform Standards for Student Reporting, Capitol Square Bldg., 550 Cedar St., St. Paul 55101; (612) 296-8420.

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ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

BOARD OF TEACHING

IN THE MATTER OF: The Proposed Adoption of a Rule of the Board of Teaching Governing Procedures for the Issuance of Life Licenses

AFFIDAVIT OF MAILING

Nancy A. Orr, being first duly sworn, deposes and says:

That on the 29th day of April, 1981, 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 Board of Teaching mailing lists.

Nancy A. Orr
Nancy A. Orr

Subscribed and sworn to before me
this 29th day of April, 1981.

Betty L. King
Notary Public

BETTY L. KING
Notary Public, Dakota Co. MN
My Commission Expires
June 13, 1983

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ADMINISTRATIVE HEARINGS

CERTIFICATE OF BOARD'S AUTHORIZING RESOLUTION

I, RAY C. OLSON, do hereby certify that I am the Chairman of the Minnesota Board of Teaching, 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 duly and properly called and held on the 16th day of January, 1981, 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 Kenneth L. Peatross, Executive Secretary of the Minnesota Board of Teaching, be and hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board, including the enactment of a rule relating to: Procedures for the Issuance of Life Licenses, as well as perform any and all acts incident thereto, including but without being limited thereto, signing an order for hearing and notice of hearing, as well as securing a hearing examiner for all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 16th day of January, 1981.

Ray C. Olson
Chairman, Minnesota Board of Teaching

Edward P. Hudson
Attest by one other officer

RECEIVED
MAY 5 1981
ADMINISTRATIVE
HEARINGS

State of Minnesota
Board of Teaching

IN THE MATTER OF: The Proposed Adoption of a Rule of the Board of Teaching Governing Procedures for the Issuance of Life Licenses

Order for Hearing

IT IS HEREBY ORDERED THIS 13th day of March, 1981, that a public hearing on the proposed rule captioned above be held in the Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota 55155 on May 16, 1981, commencing at 9:00 a.m. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons who have registered their names with the Minnesota Board of Teaching for that purpose and be published in the State Register.

State of Minnesota
Board of Teaching

Kenneth L. Peatross

Kenneth L. Peatross, Executive Secretary

RECEIVED
MAY 5 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA
BOARD OF TEACHING

Statement of Need and Reasonableness for
Proposed Rule 5 MCAR 3.002 Procedures for the Issuance of Life Licenses

Concerning: The proposed adoption of a rule governing the procedures for the issuance of life licenses.

The authority of the Board of Teaching to promulgate this rule is found in M.S. 125.185, which states in subdivision 4 that "the board of teaching shall...grant life licenses to those who qualify according to requirements established by the board of teaching..."

State Hearing Examiner, Peter Erickson concluded in his report, dated February 4, 1977, (conclusion 4, p. 17) that "...the legislature made its intention clear that at least some persons be granted life licenses when that authority was reinstated in Minn. Stat. 125.185, subd. 4." On page 20, in item 9 of his conclusions, Mr. Erickson stated: "The Examiner concludes that the Board of Teaching has documented its statutory authority to promulgate the proposed rule."

From the very beginning, as the board has sought to interpret and implement statute, carrying out its duties as charged by the legislature, it has been advised by counsel that in legislative terminology, the verb "shall" denotes mandatory action, whereas "will" is permissive. Analysis of M.S. 125.185, subd. 4, shows that the verb of which the term "life licenses", above, is the direct object of SHALL. Therefore, the board is under mandate to issue the life license to some persons according to the requirements it alone sets. Please note: the legislature clearly left it to the agency to set the requirements, stating no prerequisites or stipulations as to how the agency should conduct itself or what requirements it should set.

State Hearing Examiner Kaibel states in his report dated February 26, 1979, in Findings of Fact 6: "That statutory authority to promulgate the proposed rules is found in Minn. Stat. 125.05, subd. 1 (1978), Minn. Stat. 125.185, subd. 4 (1978), and Minn. Stat. 125.06 (1978)."

The most appropriate avenue for rule-making lies with the rule-making boards of this state. The Board of Teaching discussed this subject with a long-term, well-respected Minnesota legislator, Mr. Peter Fugina, years ago. In April, 1975, H.F. #1431 was introduced into the Minnesota Legislature by Mr. Fugina. It would grant life certification to any teacher actually employed in that capacity in the year immediately preceding July 1, 1969. Its intent was to provide equity in opportunity among all teachers employed on the date of legislative termination of life licenses.

Representative Fugina contacted the board to make known his intent regarding this legislation and was invited to appear before the Board of Teaching to explain his proposal and rationale. He did so. He explained that he, too, had been concerned about this failure to carry through the application of rule for those entering or continuing in the profession in that year in which the change took place, and he announced his determination that something be done to correct the situation. At this point, he had already drafted and introduced the bill referred to above. He had done this late in the past legislative

session, however, too late for the bill to move through the legislative process for that year. He then told the board that if it did not take action on the matter, he would reintroduce the same legislation in the next legislative session and move vigorously for its passage.

The board requested Representative Fugina not proceed until the board itself attempted to correct the inequity according to statutory authority already granted it by the legislature in 1973. Mr. Fugina agreed to that course of action. And the board tried. And tried. And it is still trying. Hence, our appearance here today. The board still believes that rule-making by the agency charged to create and implement licensure rules is far superior to rule-making by special interest legislation.

The intent of proposed rule 5 MCAR 3.002 is to correct an inequity which continues to exist. The proposed rule is not intended to address persons entering the profession (or licenses issued) after 1969. It is being proposed only for those teachers (and only for licenses they held) who had already entered the licensure cycle in this state and were affected when statute was enacted putting an end to the life license. The following testimony from the 1979 public hearing on proposed rule for life license supports this statement of board intent.

Mr. Edd Rapp, member of the Board of Teaching, who at the beginning of this hearing had presented on behalf of the board the Statement of Need, later testified:

> The intent of this rule is not to set up any new qualifications in any way for life licensure or to encourage it or to move in that direction, but only to correct an inequity under the rules that existed at that time. (PH2, T73)

Mr. Kenneth Peatross, Executive Secretary of the Board of Teaching, stated:

> As Mr. Rapp has testified, the Board is not proposing to establish new or different standards for the issuance of life licenses as defined in Minnesota Statutes. They are proposing to correct an inequity, utilizing the statutory criteria which has been applied. (PH2, T76, 77)

Later in the hearing, Dr. George Droubie, Manager of the Licensure and Placement Section of the State Department of Education, testified:

> I think, you know, again, what the Board is trying to do is to correct an inequity, not establish a whole new set of criteria for the granting of life licenses; and I know that point's been made many times, but I think that's the crux of the issue. It isn't an attempt to correct <u>any</u> (emphasis supplied) injustice, <u>every</u> (emphasis supplied) inequity with regard to life licensure. It's an attempt to give a life license to those who were teaching during the school year that the legislature happened to cut them off, and I guess that's all it's attempting to accomplish. (PH2, T100, 101)

The major concerns brought out in testimony at previous hearings and the resultant recommendations of the two hearing examiners have been addressed by the Board of Teaching in this proposed rule. The board has identified and summarized these concerns as follows:

a) the consideration of Minnesota experience only;

b) the inclusion of parochial school experience;

c) the question as to why the people addressed by this proposed rule were not eligible under previous openings of application periods for securing this license;

d) the best estimate as to how many teachers/licenses would actually be affected or involved;

e) the requests of persons who would not have qualified under the previous proposal which required the person to be teaching in Minnesota in the exact year of legislative termination of this license, namely:

(1) those for whom military draft interrupted professional service (including those with National Guard time);

(2) those whom pregnancy forced to take maternity leave in the year in question;

(3) those few engaged in graduate work during that specific school year but who taught both before and after in Minnesota schools;

(4) those who have had to take leaves of absence because of illness or disability or care of a child;

(5) those few who taught overseas for the Department of Defense and wanted to see that interruption of Minnesota professional service treated similarly to military service (especially since that teaching was done on a Minnesota teaching license);

f) the possible impact on continuing education;

g) the question of appeals;

h) specific recommendations of previous hearing examiners.

The first question, then, is why the Board of Teaching is not considering out-of-state experience. State Hearing Examiner Kaibel's report dated February 26, 1979, page 7, under Findings of Fact #10 states: "Mr. Waddick, Assistant Commissioner of Education, stated that it was his understanding as conveyed to him by Dr. George Droubie (hereinafter 'Dr. Droubie'), Director of the Personnel Licensing Section, Department of Education, that 'at no point in time prior to legislative termination of eligibility for life licensure for teachers was experience beyond or outside Minnesota considered to be applicable for eligibility for that life licensure." (PH2, T31) He further stated that to adopt such a consideration would insert a 'double standard which was contrary to the practice during the interim when life licensure was routinely available.'" (PH2, T32)

(Exact language from the hearing transcript is: "...at no point in time prior to the legislative termination of eligibility for life licensure for teachers was experience beyond or outside the State of Minnesota considered to be applicable for eligibility for that life licensure. Therefore, it would appear that in the event that there is serious thought being given to establishing the acceptability of the testimony immediately preceding mine, that we may, in effect, be after the fact inserting a double standard, which was contrary to the practice during that interim where life licensure was routinely available." T31)

It would appear, therefore, that with the exception of teaching in overseas military dependent schools on a Minnesota license, that out-of-state experience is not an appropriate consideration for the Board of Teaching in this proposed rule.

The second question is: why does the board include experience in parochial schools? The following testimony answers this question. Dr. Droubie testified:

> Mr. Hearing Examiner, the previous life law that was on the books and that was repealed by the legislature effective July 1, '69 specifically said that the experience had to be in the public schools. Okay? When it was reopened in '74, February of '74 to July '75, that public school clause was deleted thereby allowing private and parochial experience to count and that was the intent when this was drafted. So, I really don't think people are not at the hearing because, you know, they're under some misunderstanding. I think the understanding around the State is that if you had five years of experience teaching in Minnesota in a public, private or parochial school, that experience would count, provided that you held the appropriate license. I think that was the intent of legislation that was passed in '74, and this is consistent with that. (T137, 138)

Dr. Waddick added the following observation:

> Well, during the course of our discussion today we've talked, Mr. Examiner, about potential discrimination based upon one's sex, necessitating entry into military service, and another individual talked about discrimination based upon race, and we've talked about discrimination based upon sex resulting in maternity. I think, in this instance, the Department and the Board of Teaching and the State Board of Education would not be encouraging the State of Minnesota to discriminate on the base of what would be regarded, in many instances, as religious preference. (T138, 139)

It seems appropriate, then, that both the Board of Teaching and the Minnesota Legislature included experience in nonpublic schools of Minnesota as an effort to avoid discrimination in areas that are otherwide considered acceptable teaching experiences.

Ths third question deals with why the board should open an application period again; didn't these people already have a chance to apply for this license? Why didn't they do so when they had a chance? The point is: they never had the chance! These people, though they fully expected to do so, have never had a chance to apply for this license. They were cut off midstream when a system which they had already entered was suddenly and without notice, terminated.

The facts are as follows: The Minnesota Legislature had allowed the life license up to July 1, 1969. (That was the only type of licensure established by the legislature.) Up to that time, the cycle for licensure in this state was this: first, a 2-year license was issued; next, a 5-year license; and then, a life license. Because of this practice employed by the State Department of Education, teachers were under the impression that according to rule and/or law, they were not eligible for life licensure until they had had seven years of teaching experience in Minnesota. (In fact, teachers were eligible for the life license with five years of teaching experience in Minnesota.)

In 1969, the legislature enacted a statute which stopped the issuance of the life license. At that time, because of lack of clarity or misinformation, many people eligible for the life license (who had had five years teaching experience in Minnesota) did not apply for the life license. Ultimately, because of the confusion and the lack of publicity at the time of the 1969 legislative action, the legislature enacted an amendment to statute (M.S. 125.07) in 1974, allowing a period of time up to July 1, 1975, in which people who had been eligible to receive that license prior to July 1, 1969 (people who, in fact had completed five years of teaching in Minnesota but had not realized that this number of years of professional service made them eligible) could yet apply for and receive the life license upon payment of the ten-dollar fee. (It was at this time that the legislature allowed experience to be in public and parochial schools.)

This attempt on the part of the legislature to correct the problem, while commendable, dealt only with those who had completed the five years of teaching before the cut-off date. The proposed rule deals with those who had NOT completed the five years, but had, nonetheless, entered the licensure cycle and who expected to receive that same license when they had done so. These people have never had the opportunity to apply for and receive this license. This proposed rule would afford them that opportunity.

The fourth question is this: how many people would be eligible for this life license? The best estimate of the Board of Teaching is that 8,000 to 10,000 teachers would be eligible for this license. It is important here to clarify some misconceptions that have been held by some people in the past. It is a known fact that numbers can be misused or misconstrued.

Mr. Kaibel, pp. 12-13, says "In relation to the estimated number of teachers with renewable licenses (23,000) and those who could get life licenses under the proposed rule (10,000-15,000), Mr. Rapp stated that it is improper to substract the figure of 10,000 to 15,000 from 23,000 unless every one of those licenses was held in that year immediately preceding July 1, 1969. (T121) Dr. Droubie also stated that he thought the figures were inaccurate in terms of the proposed rule and emphasized the point that teachers have any number of 'areas' or fields listed on their license and while they may qualify for a life license for a field under the proposed rule, they may have other fields that they will have to continue to renew." (T119, 120)

Testimony from the Minnesota School Boards Association seems to support the above statements, as its representative testified that "A 1977 computer search conducted by the State Department of Education indicated that 23,000 persons hold renewable licenses with no life licenses appearing as a function thereon. It also showed that well over 10,000-15,000 teachers held life licenses as a major of function their license (emphasis supplied). (Howard Kaibel Report, p. 12)

But, again -- the numbers provided to the Board of Teaching by the Manager of Licensing and Placement, Dr. Droubie, indicate that 8,000 to 10,000 persons would be eligible to receive this license -- and that among those, there may be many who have other fields that they will have to contine to renew under existing rules of the Board of Teaching (fields for which licensure was issued after the July 1, 1969, legislative termination of the life license).

The fifth question deals with concerns expressed at previous hearings that the board might limit the year of entry into Minnesota teaching experience (or continuance therein) to the academic year which ended prior to July 1, 1969. The board believes that by redrafting the language to allow that entry or continuing year of Minnesota teaching experience to be in any one of the three years prior to July 1, 1969, it has adequately addressed the major concerns of both individual teachers offering testimony and Hearing Examiner Kaibel who cited this area of possible discrimination as one in which the board should make some changes in proposed rule at another hearing. The board has tried to accommodate the needs expressed in the majority of concerns which surfaced, while attempting to remain within the timeline it considered as a legitimate and logical cutoff date.

The sixth question raised is this: will the proposed rule have any appreciable effect on continuing education? Much has been made at past hearings regarding this question. The board believes that concern regarding this issue rises largely from misunderstanding and hopes that its presentation today will allay any residual fears and lay the question, finally, to rest. The main concern expressed in testimony and in comment from the hearing examiners after they had studied the hearing record centered around the continuing need for professional growth. It is a matter of record that the Board of Teaching shares this concern; that the Board of Teaching is committed to the importance of continued professional growth. It is also a matter of record that the K-12 teachers in the State of Minnesota, long before the creation of the Board of Teaching and long before the implementation of a continuing education requirement (now in the form of rule) -- that these teachers were of their own volition and motivation earning advanced degrees, taking additional courses in specialized areas of need, adding areas of specialty as needs emerged from the field, and engaging in professional service not only at the district level, but in regional, state, and national areas as well.

The board's own survey of life license holders in this state and its research on continuing education support this assessment and should assure anyone concerned that teachers, including life license holders, do in fact continue their professional growth, regardless of the type of license held. (The initial survey mailing was made in March of 1978; a follow-up survey was mailed in April; staff analysis was reported to the board in May.) In the survey of life license holders, a random sample of persons holding life licenses was questioned specifically regarding professional growth activities in which they had participated during the five year preceding the survey. The results

clearly show that the overwhelming percentage of life license holders do, indeed, continue their professional growth. Table III shows that 75% of life license holders earned over the 120 renewal units required of persons holding continuing licenses and that all life license holders completed some professional growth activities. Survey results are provided to become a part of this hearing record. Extensive research conducted by Dr. Al Ollenberger of the UM/Duluth and Mr. Dale Rapp, Chairman of the Duluth Continuing Education Committee substantiate and further illuminate the board's assurance that the issuance of the life license does not mean the cessation of -- nor does it even seem to indicate a noticeable diminution of -- professional growth.

It should be stressed that whereas many have seemed to interpret a continuing education rule as a requirement incumbent upon this board, statutory language governing the licensing boards in this regard is permissive, not mandatory. The only mandate in that language is a maximum number of clock hours a board may require in a given period of time -- and from that maximum, this board was made exempt at its own request. For the record, M.S. 214.12 states:

> The health related and non-health related licensing boards may (emphasis supplied) promulgate by rule requirements for renewal of licenses designed to promote the continuing professional competence of licensees. These requirements of continuing professional education or training shall be designed solely to improve professional skills and shall not exceed an average attendance requirement of 50 clock hours per year. All requirements promulgated by the boards shall be effective commencing January 1, 1977, or at a later date as the board may determine. The 50 clock hour limitation shall not apply to the board of teaching.

Minnesota statute clearly gives this licensing board the authority to set the requirements for the issuance and renewal of all licenses which it issues. It is the judgement of this board that based on the demonstrated record of their already-existing (and largely self-initiated) pattern of continued professional growth, teachers issued the life license will, in fact, continue to address in a responsible, professional manner the existing and emerging needs in the field and their ability to deal with them.

Should there still be some doubters -- let the burden of proof now rest upon them. This agency suggests two possible avenues or approaches through which they might satisfy any remaining concerns:

1) Instead of blanketly indicting a whole group of current and potential holders of the life license, observe and evaluate life license holders at the district level. To date, this board has received not one complaint against any holder of a life license in this State which charges that that individual teacher has not continued his/her professional growth to the satisfaction of the employing district. If an individual teacher should happen to be found deficient or remiss, districts are free to require of that person as a condition of employment whatever is needed to correct the situation. But certainly, 8,000 to 10,000 professionals should not be prohibited from receiving this license on the basis of pure supposition and speculation. Many of these teachers are now career veterans, people who have now had to wait yet another five plus years to receive this license which they had expected as a right upon entry into teaching in this state.

2) Further, perhaps doubters might do well to study the records of the teacher preparation institutions in this state (and others as well, for that matter) for, let us say, the past fifty to seventy-five years. The board suggests that the records will show that the consumers of the traditional and expanding programs at those institutions have been, in large part, practicing teachers; that is, that over the major half of this century, it has been the K-12 practitioners who have been completing those evening and summer courses and weekend institutes and seminars — and not, to any comparative degree, the undergraduate students.

It must be concluded, therefore, that the proposed rule will not have any appreciable effect upon continuing education.

The seventh question asked: what about special cases where a person denied this license still believes he/she qualifies for it? The Board of Teaching already uses an appeal process, established in rule. That rule would be applicable to any appeals that might occur under this proposed rule. It states:

BT3.020: Appeal to the Minnesota Board of Teaching

A. All persons denied issuance or renewal of teaching licenses, and all Minnesota teacher preparing institutions denied program or college approval, and all persons licensed by the Minnesota Board of Teaching whose appeals are denied by the local committee for continuing education/relicensure, are hereby entitled to a hearing pursuant to Minnesota Statutes Chapter 15 on such denial and to a final decision by the Minnesota Board of Teaching.

B. A person or an institution entitled to a hearing under the provisions of this rule shall file a written request for such hearing with the executive secretary of the board of teaching within thirty (30) days from the date of denial. Failure to file a written request for a hearing within thirty (30) days constitutes a waiver of the individual's right to a hearing. (BT 1979)

And finally, what specific recommendations were made by the two previous hearing examiners? Mr. Peter Erickson, in his report dated February 4, 1977, recommended "That the Board of Teaching adopt the proposed rules as recommended in this Report." (p. 21) The amendment cited is to be found on page 18 of his Report, where he states: "BT 2 should be amended as set out in Findings 7(d) and 7(f) for the reasons stated therein." On page 4, Finding 7(d) states: "The MASA also proposes to amend BT 2 by adding the language 'applying to the grades and subjects taught and certificates held.' They contend that if this language is not added, the application will prevent many legitimate certificate holders from receiving life licensure."

This recommendation of Hearing Examiner Erickson has been followed by the language in the redrafted rule proposed today: ...may apply for and receive a life license for those grades, subjects, and fields for which Minnesota licensure was held prior to July 1, 1969..."

Further, on pages 4-5 of the Report, in Finding 7(f), Mr. Erickson states: "Edward A. Rapp, member of the Board of Teaching, proposes to amend BT 2 by changing the fourth line to read, '...in any one of the three years immediately...' He contends that this proposal would allow for temporary absences immediately prior to 1969, while excluding those teachers who left the profession for an extended period of time."

This recommendation of Hearing Examiner Erickson has been followed by the language in the redrafted rule as proposed today: "...who was actually employed as a classroom teacher or other similar professional employee on a regular contract in any one of three years immediately preceding July 1, 1969..."

Mr. Howard Kaibel, on page 17 of his Report, dated February 26, 1979, stated that "It is hereby recommended: That the Board of Teaching redraft the proposed rule 5 MCAR 3.002 relating to life licenses in accord with this Report and repromulgate it after a further hearing thereon."

That is precisely what the board has done (that is, redraft) and is attempting to do (that is, to promulgate the redrafted rule) today. It would appear, therefore, that the recommendations of two staff public hearing examiners have been fully met by this proposed rule.

Concluding Remarks

On the basis of its own experience and study which must, perforce, include the oral and written testimony submitted in the course of over five years of work on this subject, the Board of Teaching believes that it is reasonable to promulgate the rule as proposed today. It is designed to meet the needs of the 8,000 to 10,000 teachers for whom it was intended to correct an inequity. The large number of persons testifying in support of the rule at each hearing attests to the need perceived by teachers in this state. The preponderance of testimony is in clear support of the proposed rule.

It is important to note that some who expressed concerns in previous hearings did so in an effort to have themselves included in the rule. Most who raised questions regarding Continuing Education requirements, for example, were not actually in opposition of the proposed rule. On the contrary, they were simply expressing a human reaction that if they had to meet certain requirements, others should so the same. In contrast to those few are the thousands of persons who support the board's proposal. (Citation here to the following testimony:

PH1 - Orrin DeLong (T 16, 17, 18) and survey results which are part of the hearing record
PH1 - Henry Winkles (T 25, 26, 27, 28)
PH1 - John Ferkul (T 12, 13, 14) and survey results which are part of the hearing record
PH2 - Ruth Dittes Blackstad (T 32, 33, 34)
PH2 - Brother Robert Thomas (T 45)

As the record shows, many thoughtful, active professional practitioners attest that the rule is desirable. (As a matter of fact, as teachers learned of the rule to be heard here today, Dr. Droubie has received a number of inquiries about and requests for application forms for this license.) It must be

concluded that since the major objections offered were not against the proposed rule itself, but rather consisted of attempts to broaden the rule to include more people -- or were unwarranted concerns about possible damage to the continuing education/professional growth concept, the proposed rule is both reasonable and desirable.

It would be appropriate here, to reiterate statements of two members of the Board of Teaching which appear in the hearing transcript from the second hearing:

Joseph Moren, then Chairman of the Board of Teaching stated:

> ...we're trying to be very practical. We hear of these inequities and we know they're going to exist. We can't take care of every inequity...I'm afraid that...200 people might prohibit the 8,000 people now getting this license. (PH2, T97+)

The board member Ed Rapp added:

> Should the fact that inequities exist that are not addressed, by this rule put in jeopardy a rule addressing and, obviously, meeting a serious inequity for 8,000 to 10,000 people or, restated, if it will make right a wrong affecting 8,000, should the fact that a few hundred others may not be made right negatively affect this rule? (PH2, T67, 68)

Most decisions made by state or federal agencies are unfair to someone. What the agency responsible must do is to design the policies, to make the decisions, as fair as possible. Most rules and regulations discriminate against someone. Obviously, they are not created for that purpose -- but any time a decision is made on the basis of category, geography, time, or similar distinction, it is likely that some people will feel that they have not been treated fairly. Yet such distinctions will no doubt continue to be made as long as there is human life on this planet. What the agency responsible must do is to design policies and to make decisions which will discriminate against as few people as possible, within the bounds of prudence, good judgment, and reason.

"The buck stops here," was a favorite saying of Harry Truman. In the last analysis, some one individual or agency must make a decision and stand by it. The board, acknowledging an existing inequity, has had to face this question: should everyone receive this type of license or only certain persons? if the latter, who? and upon what bases can or should a decision be made? The Board of Teaching has tried to be as fair as possible in drafting this rule proposed today. The board deems that it is:

FAIR to acknowledge the inequity experienced by those teachers who had entered the licensure cycle of this state and who had expected to receive a life license after five years of teaching here;

FAIR to choose 1969 as the last year for consideration of qualify for the year of entry into the profession, because that was the year in which the entire "old life" system was brought to an end by the legislature;

FAIR to allow people who had entered the cycle to complete it;

FAIR in include the parochial school experience, because the legislature did so in one of its own reopenings;

FAIR to attempt to address problems of people who may have been out of the field temporarily for a number of different reasons in the exact year of legislative cutoff, though they had begun their Minnesota teaching experience within a short time of that year;

FAIR to establish reasonable limits.

In Summary, then:

It is the belief of the Board of Teaching that the rule proposed today, corrected and revised as a direct result of two previous public hearings, is:

a) Necessary to correct the inequity done to the teachers who had begun the licensure cycle in Minnesota but were not allowed to complete it;

b) Reasonable in that it utilizes as far as possible, conditions, qualifications, and timelines set by the legislature itself;

c) Fair because it has addressed insofar as the board deems reasonable as cited in (b) above, the questions regarding the major exclusions or chances of discrimination called to the attention of the board through the previous hearings.

Therefore. does the Board of Teaching attempt to promulgate the rule for the issuance of life licenses as proposed at this Hearing.

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STATE OF MINNESOTA
BOARD OF TEACHING

Statement of Evidence

In addition to the Statement of Need which is available for inspection or purchase at the Office of Administrative Hearings, 1745 University Avenue, St. Paul, Minnesota 55104 and in support thereof, the Board of Teaching will introduce the following evidence and will call the following expert witness to testify:

5 MCAR § 3.002 Rule governing the procedures for the issuance of life licenses:

Kathryn Rayburn, Teacher
Rochester Public Schools
Rochester, Minnesota 55901

Kathryn Rayburn will establish that the need to adopt 5 MCAR § 3.002 Procedures for the Issuance of Life Licenses arises from the following reasons:

1) M.S. 125.185, Subd. 4 mandates that the Board of Teaching "grant life licenses to those who qualify according to requirements established by the Board of Teaching."

2) In 1969, the Minnesota Legislature removed the opportunity for life licensure from all "continuing" teachers except those who qualified with at least five years of experience prior to July 1, 1969, thus depriving active teachers in the field of a right available and expected upon entry into the profession.

3) The date of July 1, 1969, appears to be arbitrary as applied to practicing teachers.

4) A precedent for instituting a system of grandfathering for those teachers who presented a valid claim has already been established by the 1973 Legislature which authorized those non-life licensed teachers eligible in 1969 to apply for and receive such licensure by July 1, 1975.

5) Approximately eight to ten thousand teachers in the State of Minnesota have been affected by this loss of potential life licensure.

6) The need as perceived by the Board of Teaching has been supported and attested to at two previous public hearings, but until now, the Board of Teaching has been unable to promulgate a rule to correct the acknowledged inequity.

7) State Hearing Examiner Peter Erickson stated in his report, dated February 4, 1977, in the tenth Finding of Facts "That the need for and reasonableness of proposed BT 2 . . . as recommended to be modified in this report, has been shown by an affirmative presentation of facts." (Note: BT 2 was the old number, under a previously existing numbering system, which indicated a previously proposed rule on life licenses. That rule, now revised, is currently proposed under the number 5 MCAR § 3.002.)

8) Mr. Erickson concluded his report of February 4, 1977, with the recommendations "That the Board of Teaching adopt the proposed rules as recommended to be amended in this Report."

9) State Hearing Examiner Howard L. Kaibel, Jr., in his report, dated February 26, 1979, stated that "It is hereby recommended: That the Board of Teaching redraft the proposed rule 5 MCAR † 3.002 relating to life licenses in accord with this Report and repromulgate it after a further hearing thereon."

MINNESOTA BOARD OF TEACHING

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NOTICE

THE PUBLIC HEARING CONCERNING THE PROPOSED RULE GOVERNING PROCEDURES FOR THE ISSUANCE OF LIFE LICENSES ORIGINALLY SCHEDULED TO BE HELD ON SATURDAY, MAY 16, 1981, HAS BEEN RESCHEDULED AND WILL BE HELD ON:

SATURDAY, MAY 30, 1981
9:00 A.M.
CONFERENCE ROOM D
VETERANS SERVICE BUILDING
20 WEST 12TH STREET AND COLUMBUS AVENUE
ST. PAUL, MINNESOTA 55155

State of Minnesota
Board of Teaching

In the Matter of Proposed Adoption
of a Rule of the Board of Teaching
Governing Procedures for the Issuance
of Life Licenses

Notice of Hearing

A public hearing concerning the proposed rule will be held at Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota 55155 on May 30, 1981, commencing at 9:00 a.m. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process. 5b

Following the agency's presentation at the hearing all interested or affected persons will have an opportunity to ask questions and make comments. 2
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 Richard C. Luis, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, MN 55104, telephone (612) 296-8114 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 §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner. 5a 7a 7b 11

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 Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge. 9

The Board's authority to promulgate the proposed rules is provided by Minn. Stat. § 125.05, subd. 1 (1980) and Minn. Stat. § 125.185, subd. 4 (1980). 4

The Board estimates that there will be no cost to local bodies in the State to implement the rule for two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978). 10

A copy of the proposed rule is attached hereto. One free copy may be obtained by writing to Kenneth L. Peatross, 608 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101. Additional copies will be available 3a/b

at the door on the date of the hearing. If you have any questions on the content of the proposed rule, contact Kenneth L. Peatross.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Board may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the Board. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner, in the case of the Hearing Examiner's Report, or to the Board, in the case of the Board's submission or resubmission to the Attorney General. 8

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 (1979 Supp.) 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 one 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 6

(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.

State of Minnesota
Board of Teaching

Kenneth L Peatross

Kenneth L. Peatross, Executive Secretary

Date: 3/13/81

Rule as Proposed (All New Material)

5 MCAR § 3.002 Procedures for the Issuance of Life Licenses

Any teacher currently holding a valid license to teach granted by the Minnesota Board of Teaching having a minimum of five years teaching experience in Minnesota, who was actually employed as a classroom teacher or other similar professional employee on a regular contract in any one of three years immediately preceding July 1, 1969, may apply for and receive a life license for those grades, subjects, and fields for which Minnesota licensure was held prior to July 1, 1969, upon payment of a processing fee of twenty dollars ($20.00). The application period to apply for a life license according to the provisions of this rule shall expire July 1, 1982. The application shall be in writing on a life license application form addressed to:

Minnesota State Department of Education
Personnel Licensing Section
Sixth Floor, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Life license application forms may be obtained from:

Minnesota State Department of Education
Personnel Licensing Section
Sixth Floor, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2046

Rule as Proposed (All New Material)

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5 MCAR § 3.002 Procedures for the Issuance of Life Licenses

Any teacher currently holding a valid license to teach granted by the Minnesota Board of Teaching having a minimum of five years teaching experience in Minnesota, who was actually employed as a classroom teacher or other similar professional employee on a regular contract in any one of three years immediately preceding July 1, 1969, may apply for and receive a life license for those grades, subjects, and fields for which Minnesota licensure was held prior to July 1, 1969, upon payment of a processing fee of twenty dollars ($20.00). The application period to apply for a life license according to the provisions of this rule shall expire July 1, 1982. The application shall be in writing on a life license application form addressed to:

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St. Paul, Minnesota 55101
(612) 296-2046

MINNESOTA BOARD OF TEACHING

608 CAPITOL SQUARE BUILDING
550 CEDAR STREET
ST. PAUL, MINNESOTA 55101
(612) 296-2415

KENNETH L. PEATROSS
EXECUTIVE SECRETARY

EXECUTIVE COMMITTEE
JOSEPH MOREN, CHAIRMAN
JO MALMSTEN, VICE-CHAIRMAN
MARGERY HARRIS, SECRETARY
EDWARD HUDOBA, DIRECTOR
MARIE McNEFF, DIRECTOR
KATHRYN RAYBURN, DIRECTOR

September 1, 1981

Mr. Jerry Anderson
Special Assistant Attorney General
G-25 Administration Building
St. Paul, Minnesota 55155

RE: In the matter of the proposed adoption of 5 MCAR § 3.002

Dear Mr. Anderson:

Pursuant to the rules of the Office of the Attorney General, I hereby submit for final approval by the Office of the Attorney General the above cited rule of the Board of Teaching heard at public hearing on May 30, 1981. The rule was adopted by the Minnesota Board of Teaching on August 7, 1981.

The rule as adopted is amended by the Board of Teaching in accordance with Board action taken on May 30, 1981, in compliance with Minnesota Statutes. A copy of the Board minutes of the May 30, 1981, Board meeting is enclosed.

The complete hearing record is also enclosed pursuant to the requirements of the Office of the Attorney General.

Sincerely,

Kenneth L. Peatross

Kenneth L. Peatross, Executive Secretary
MINNESOTA BOARD OF TEACHING

KLP/nao

Enc.

cc: Sheila S. Fishman, Special Assistant Attorney General
Duane Harves, Chief Hearing Examiner

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

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

Sheila S. Fishman
SPECIAL ASSISTANT ATTORNEY GENERAL

Dated: Aug 27, 1987

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ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

BOARD OF TEACHING

IN THE MATTER OF: The Proposed Adoption of a Rule of the Board of Teaching Governing Procedures for the Issuance of Life Licenses

AFFIDAVIT OF MAILING

Nancy A. Orr, being first duly sworn, deposes and says:

That on the 29th day of April, 1981, 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 listed on the attached sheet.

Nancy A. Orr
Nancy A. Orr

Subscribed and sworn to before me
this 29 day of April, 1981.

Luana Vadnais
Notary Public

LUANA VADNAIS
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires June 16, 1984

Following are groups of people who received notice of the May 30, 1981, public hearing from this office but did not register their names to receive such notice:

434 Superintendents in the State of Minnesota

460 Continuing Education Chairmen in the State of Minnesota

58 Persons who have registered their names to be on the Board of Teaching monthly mailing list (minutes and agenda)

25 Deans and Chairmen of Colleges/Departments of Education in the State of Minnesota

STATE OF MINNESOTA

BOARD OF TEACHING

CERTIFICATE OF BOARD'S ADOPTION
OF RULES RESOLUTION

I, Edward Hudoba, do hereby certify that I am Secretary of the Board of Teaching, a board duly authorized under 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 on August 7, 1981, that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED that in support of the adoption of 5 MCAR § 3.002 Procedures for the Issuance of Life Licenses, presented for hearing by the Board of Teaching at the public hearing on May 30, 1981, the Board of Teaching adopts the Findings of Fact and Conclusions of Hearing Examiner Luis dated July 10, 1981, with the following modification which is in accord with a resolution adopted by the Board of Teaching on May 30, 1981, which is in compliance with the requirements of Minnesota Statutes: Any teacher currently holding a valid license to teach granted by the Minnesota Board of Teaching having a minimum of five years teaching experience in Minnesota, who was actually employed as a classroom teacher or other similar professional employee on a regular contract in any one of three years immediately preceding July 1, 1969, may apply for and receive a life license for those grades, subjects, and fields for which Minnesota licensure was held prior to July 1, 1969, upon payment of a processing fee of ~~twenty dollars~~ ~~($20.00)~~ thirty-five dollars ($35.00). . . .
>
> And, that the rule relating to Procedures for the Issuance of Life Licenses be and is hereby approved and adopted, pursuant to the authority vested in us by M.S. 125.185, and Ray C. Olson, Chairman of the Board of Teaching, be and hereby is authorized to sign an order adopting this rule."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 7th day of August, 1981.

Edward P Hudoba
Secretary

ATTEST:
Kenneth A-Awes
Vice Chairman

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ADMINISTRATIVE
HEARINGS

State of Minnesota
Board of Teaching

In the Matter of the Proposed
Adoption of a Rule of the Board
of Teaching Governing Procedures
for the Issuance of Life Licenses

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the State Board of Teaching for the purpose of receiving notice of the proposed adoption of rules by this Board is accurate and complete as of 4:00 p.m., this 29th day of April, 1981.

Nancy A. Orr
Nancy Orr

Subscribed and sworn to before me
this 13 day of May, 1981.

Luana Vadnais
Notary Public

LUANA VADNAIS
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires June 15, 1984

State of Minnesota
Board of Teaching

IN THE MATTER OF: The Proposed
Adoption of a Rule of the Board
of Teaching Governing Procedures
for the Issuance of Life Licenses

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Minnesota Board of Teaching for the purpose of receiving notice of the proposed adoption of rules by the Board of Teaching is accurate and complete as of 2 o'clock p.m. this 29th day of April, 1981.

BOARD OF TEACHING

Nancy A. Orr

Nancy A. Orr