

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

2/2/83 Jerry Anderson

~~5307~~ REM Rules

5304 • E Compatable

"polite society" → vague throw out

→ Perhaps should phrase positively and then adjust .5307 accordingly

incompatable → compatible

Our File No. 807

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4-22-82
DATE FOR REVIEW 4-30-82
DATE DUE 5-6-82

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

Approved _____ Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State _____ Revisor approved _____ disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed See SR

✓ Order Adopting 4.19.82 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

_____ Notice of rulemaking
_____ Sufficiency

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

✓ Mailing list Certificate

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

N/A Hearing Examiner's Report

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

N/A Agency's Findings of Fact — no changes from Rules as Prop.

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

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

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

STATE OF MINNESOTA

DEPARTMENT Administration

Office Memorandum

TO : James J. Hiniker, Jr., Commissioner
Department of Administration

DATE: May 6, 1982

ATTEN: Ted A. Martinez, Special Assistant Attorney General

FROM : Jerry S. Anderson, Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Department of Administration, Real Estate Management Division, Governing the Leasing of State Property, 2 MCAR §§ 1.5302-.5327

The above-referenced rules have not been approved for the following reasons:

1. The last paragraph in § 1.5307, relating to § 1.5307 C., has not been shown to be reasonable. The statement of need and reasonableness fails to support delegating to affected agency heads total authority for deciding the question of compatibility. There also is some question as to the legality of the Commissioner delegating this authority to other agency heads.

2. Section 1.5309 is not supported by the statement of need and reasonableness. The rule, as written, bears little relationship to the rule apparently contemplated by the statement. Additionally, the phrases "serious adverse effect" and "substantial number of citizens" are disapproved because they are vague and do not give sufficient guidance to persons affected by these rules.

3. Section 1.5310 is dependent on and cannot exist without § 1.5309.

4. There is no statutory authority for § 1.5312.

5. The exception in § 1.5314 has not been shown to be reasonable. Further, the exception apparently is inconsistant with the intent of the agency, which was expressed to me to be an intent to have notice mailed to those on the list and published in the State Register in all cases, with notice published in a newspaper in additional situations. The statement of need and reasonableness fails to provide any support for the exception other than a conclusory statement.

6. Section 1.5315 A. is not supported by the statement of need and reasonableness. In fact, the statement of reasonableness in inherently inconsistent.

7. Section 1.5318 B. appears to set an additional standard for leasing not included in § 1.6307. It is not clear whether "consistent with the State's intended use and management of the property" is intended as an additional factor to those listed in § 1.5307 or as a general restatement of that section. Further, the statement of need and reasonableness does not provide support for this as a standard for leasing.

8. Section 1.4322 makes no discernable distinction between the situations in which the State is to be named as an additional insured and those in which the lessee must buy a separate policy naming the State as the sole insured. Additionally, the standards for requiring insurance are vague. The effect is to grant to the Commissioner of Administration excessive discretion in requiring the purchase of liability insurance.

9. There is no statutory authority for the adoption of the second and third sentences in § 1.5326.

After consideration of the above comments and agency action, if any, these rules may be resubmitted for our review. Upon resubmission, please include a new or supplemental Order Adopting and two copies of the new Rule as Adopted. Also, please include a memorandum specifying that the rules are being resubmitted so that we may obtain our initial file in this matter.

Additionally, at the time when you resubmit the new rule to this office, you must submit two copies of the same to the Revisor of Statutes.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to call me.

JSA/jh

cc: Ms. Kathy Burek
Ms. Ann Bateson

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT of Administration

Office Memorandum

TO : Ted Martinez
S.A.A.G.

DATE:
April 19, 1982

FROM : James J. Hiniker, Jr.
Commissioner

PHONE:
296-3862

SUBJECT: Adoption of Rules
2 MCAR § 1.5302 Through 1.5327

In conjunction with this department's proposed adoption of rules by the non-controversial procedure, i.e., without a public hearing, I submit with this memorandum the following:

1. A copy of the proposed rules as published in the State Register on March 8, 1982;

2. A copy of an ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING;

3. A copy of the NOTICE OF INTENT TO ADOPT RULES as published in the State Register on March 8, 1982;

4. A copy of an affidavit by Pat Meinke of the Real Estate Management Division averring that a copy of the NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING was served by United States Mail on all persons and associations who have requested notice of proposed adoption by the State of Minnesota;

5. A copy of a certificate in which Colleen T. Kisch, Office Services Supervisor II in the Department of Administration certifies that the list of persons and associations who have requested that their names be placed on file with the State of Minnesota for the purpose of receiving notice of the proposed adoption of rules by the Department of Administration was accurate and complete as of 1:00 p.m., February 25, 1982;

6. A copy of an affidavit by Howard W. Eicher of the Real Estate Management Division averring that the only written communication received concerning these rules during the 30 day comment period was a request for a copy of the proposed rules;

7. A copy of an affidavit by Howard W. Eicher of the Real Estate Management Division averring as to the date, time, and disposition of telephone comments received during the 30 day period immediately following publication of the proposed rules in the State Register;

8. A copy of the Statement of Need and Reasonableness;

9. A copy of the Order Adopting Rules;

10. A copy of a Notice of Submission to the Attorney General;

11. A copy of an affidavit by Pat Kinney of the Real Estate Management Division averring that a notice was served by United States Mail on all persons and associations requesting notice that the proposed rules have been submitted to the Attorney General;

12. A copy of a memorandum with which a copy of the proposed rules were submitted to the Revisor of Statutes' office for review;

13. A certificate of compliance for your use when and if the adoption of the rules is approved.

Please take note that the rules I now propose to adopt are verbatim with the proposed rules as published in the State Register on March 8, 1982. The comments received during the 30 day period following publication did not seek nor suggest changes in the proposed rules as published. I am convinced the best interests of this department and the people of Minnesota will be served with the efficacy of these rules as published.

If you need further information or assistance from this department to properly deliberate these rules, please direct your request to Howard W. Eicher of the Real Estate Management Division, telephone 296-1897.

JJH/pk

 AG copy

Department of Administration
Real Estate Management Division

Adopted Rules Governing Leasing of State Property

Rules as Adopted

2 MCAR S 1.5302 Authority. Rules 2 MCAR SS 1.5302-1.5327 are authorized by Minn. Stat. S 16.02, subd. 14.

2 MCAR S 1.5303 Purpose. Rules 2 MCAR SS 1.5302-1.5327 are promulgated to govern the leasing of state-owned real property which is temporarily not needed for public use and the leasing of which is not otherwise provided for or prohibited by law.

2 MCAR S 1.5304 Definitions.

A. Applicability. For the purposes of 2 MCAR SS 1.5302-1.5327, the following terms have the meanings given them.

B. Commissioner. "Commissioner" means the Commissioner of the Department of Administration.

C. Department. "Department" means the Department of Administration.

D. Real estate management division. "Real estate management division" means the Real Estate Management Division of the Department of Administration.

2 MCAR S 1.5305 Commissioner's duties. The commissioner shall establish and enforce the conditions in a lease entered into under 2 MCAR SS 1.5302-1.5327.

2 MCAR S 1.5306 Responsibility for leasing. The commissioner shall determine whether a state-owned property will be leased. The commissioner shall make the determination after a comprehensive evaluation of the circumstances surrounding the proposed lease.

2 MCAR S 1.5307 The property may be leased only if the evaluation referred to in 2 MCAR S 1.5306 discloses the following:

A. That the property is available for lease;

B. That the applicant for the lease is willing and able to pay rent which, at a minimum, equals the state's direct and indirect costs in providing the property being leased;

C. That the proposed use of the property by the applicant for the lease is compatible with existing or contemplated state operations and programs that might be affected by the lease;

D. That the proposed use of the property by the applicant for the lease is in compliance with all state and local ordinances and codes;

E. That the applicant is duly licensed to use the property as proposed in the application for the lease; and

F. That the proposed use of the property by the applicant for the lease will not adversely affect the neighborhood or community in which the property is located.

The compatibility required by C. shall be established by the heads of the agencies operating the affected existing or contemplated state programs. The commissioner shall not lease state property without a written statement from affected agency heads that the proposed use of the property by the lessee is not incompatible with existing or contemplated state operations and programs.

2 MCAR S 1.5308. Effect of lease on community; final jurisdiction. The commissioner has final jurisdiction in establishing whether the effect of the lease of the state-owned property on the neighborhood or community in which the property is located is adverse to the extent that the property should not be leased.

2 MCAR S 1.5309 Adverse effect of lease; public hearing. Nothwithstanding 2 MCAR S 1.5308, when the commissioner has information that a serious adverse effect on the neighborhood or community may be created by the leasing of the property, or when the commissioner has information that the leasing of the property is objectionable to a substantial number of citizens in the neighborhood or community, the commissioner may direct that

a public hearing be convened.

2 MCAR S 1.5310 Public hearing procedure.

A. Informal process; opportunity for hearing. The hearing referred to in 2 MCAR S 1.5309 shall be informal. It shall provide an opportunity to all interested persons to publicly object to or support, orally or in writing, the lease being considered.

B. Advertisement. The hearing must be advertised in a newspaper having general circulation in the area in which the property is located. The advertisement must appear at least one week before the date of the hearing. In addition to announcing the time and the place of the hearing and the subject to be discussed, the advertisement shall invite written testimony by all persons unable or unwilling to appear.

C. Written testimony. Persons wishing to testify in writing as authorized in A. will be invited to do so by writing to: Commissioner of Administration, State of Minnesota, 50 Sherburne Avenue, St. Paul, Minnesota 55155.

D. Findings of fact; decision. Within ten working days following the hearing the commissioner shall make findings of fact based on testimony at the hearing and shall decide to lease or not to lease the property.

E. Published notice of decision. The commissioner shall, by publication in the State Register and by conspicuous posting in the real estate management division, give notice of the decision and the reasons for the decision.

F. Mailed notice of decision. Each party who has expressed an interest in leasing the property shall be notified by mail of the commissioner's decision and the reasons for the decision.

2 MCAR S 1.5311 Drafting of lease. The real estate management division shall draft all real property leases. Each lease shall be in accord with its policy and procedures and shall be in a form approved by the attorney general.

reject

2 MCAR S 1.5312 Advertising expenses and other pre-lease costs. Advertising expenses and other pre-lease costs incurred by the

real estate management division in leasing the property shall be borne by the agency which had custodial control of the property when it was declared temporarily unneeded.

2 MCAR S 1.5313 Notice to interested parties.

A. Request for notice. All parties wishing to be notified of the availability for lease of temporarily unneeded state property may request notification by written request sent to: Director of the Real Estate Management Division, G-22 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155.

B. List of requesters. A list of parties who request notification or whose interest in leasing such property is otherwise known to the real estate management division shall be maintained by the real estate management division. The list shall indicate the particular areas in which the interested party has expressed an interest.

C. Retention of names on list. Each interested party's name shall remain on the list for one year. Then the name shall be removed unless a new expression of interest is made known to the real estate management division.

D. Mailing of notice. The notice that a property is available for lease shall be mailed to all appropriate parties on the list when state-owned property becomes available for lease. The notice shall be mailed at least 15 calendar days before the bid return deadline.

2 MCAR S 1.5314 Advertisement of property in State Register. In addition to mailing of the notice described in 2 MCAR S 1.5313 D., the real estate management division shall, except as provided in 2 MCAR S 1.5315, advertise the property for lease in the State Register.

2 MCAR S 1.5315 Advertisement of property in newspaper.

A. Requirement. When the commissioner has information that more than two parties are interested in leasing the property, he shall advertise the property for lease in a newspaper having general circulation in the area in which the property is located.

B. Time. The newspaper advertisement shall appear on the same day of the week for two successive weeks. The final advertisement shall appear at least seven days before opening of bids.

2 MCAR S 1.5316 Notice that property will not be leased. If a decision is made not to lease property for which application to lease has been received, public notice of the decision and reasons for the decision shall be published in the State Register and posted in the real estate management division.

2 MCAR S 1.5317 Posting of notification that property has been leased. When a property has been leased, notification shall be posted conspicuously in the real estate management division for a period of 30 days from the date of execution of the lease.

2 MCAR S 1.5318 Awarding of lease.

A. Open competition. Except as provided in 2 MCAR SS 1.5319-1.5320, the lessee shall be selected on the basis of free and open competition.

B. Award standards. The property shall be leased to the highest responsible bidder, consistent with the state's intended use and management of the property, if the bid fulfills the minimum rent required in 2 MCAR S 1.5307 B.

C. Rejection and waiver. The department expressly reserves the right to reject any or all bids or to waive informalities in them.

2 MCAR S 1.5319 Waiver of competitive bidding process. Open competitive bidding for leasing state-owned property may be waived when the commissioner determines that one or more of the following circumstances exist:

A. There is only one interested party that can feasibly use the property;

B. The contemplated rental term is 90 days or less;

C. The party wishing to lease the property is a not-for-profit organization, and the proposed lessee's occupancy is clearly a public benefit as determined by the commissioner;

or

D. Factors other than bid price, such as maintenance of the property, are paramount.

2 MCAR S 1.5320 Order of priority in awarding leases. Except to the extent that the state reserves the right to advertise unneeded property to protect the integrity of the competitive bidding process, the state shall refrain from engaging in the real estate market. Unused state real estate shall be made available to entities in the following order of priority:

A. State departments and agencies;

B. University of Minnesota;

C. Other governmental subdivisions;

D. Public or not-for-profit organizations with particular priority given to those organizations which operate to provide a social or community service;

E. Private enterprises established for profit, with particular priority given to those organizations which operate to provide a social or community service.

2 MCAR S 1.5321 Protection of state's interests; legal claims. The lessee shall, in every instance, be required to indemnify and hold the state harmless for any claim, meritorious or otherwise, and for any causes of action, regardless of their nature, arising directly or indirectly out of lessee's use or occupancy of the property. The state shall not be liable for any damage to property of the lessee or injury to lessee or the lessee's invitees.

2 MCAR S 1.5322 Liability insurance to be purchased by lessee.

A. Requirement and amount. If in the judgment of the commissioner the proposed use or occupancy of the property by the applicant for the lease will seriously jeopardize life or property, the lessee shall be required to purchase liability insurance which protects all persons and their property from injury or damage. The amount of liability insurance shall not be less than: $100,000 minimum coverage per person per occurrence; $500,000 minimum coverage per occurrence; and

$100,000 minimum additional coverage for damages to or loss of property per occurrence.

B. Contents; copies. The insurance policy shall name the state of Minnesota as an additional insured. A copy of either the policy or a certificate of insurance shall be furnished to the state before occupancy by the lessee. The policy shall include an endorsement providing for not less than 15 days prior written notice to the state in the event of material change or cancellation of the insurance.

C. State as sole insured. If in the judgment of the commissioner the proposed use or occupancy of the property by the applicant for the lease will place life or property in severe jeopardy, the commissioner may require that the liability policy required in A. and B. be a policy in which the state of Minnesota is named as the sole insured.

2 MCAR S 1.5323 Improvements to become property of the state. All improvements to the property made by a lessee shall become the property of the state except as expressly agreed upon in the lease.

2 MCAR S 1.5324 Cost of remodeling, upgrading, or landscaping property. The cost of remodeling, upgrading, or landscaping the property to prepare or maintain it for lessee's use, or the cost of remodeling or retrofitting to bring a property into compliance with the state building code or any local code shall be borne solely by the lessee.

2 MCAR S 1.5325 Material change in premises; prior approval required. Remodeling, upgrading, landscaping, retrofitting, or any other action which will materially change the premises shall not be commenced by the lessee without prior approval of the commissioner.

2 MCAR S 1.5326 Disposition of funds; where deposited. Except as otherwise provided by law, money received by the commissioner from the leasing of unneeded state property shall be credited to the general fund of the state. However, a portion of the

proceeds from the lease equal in amount to the advertising expenses and other pre-lease costs referred to in 2 MCAR S 1.5312 may be remitted to the account from which the expenses and costs were paid. Funds so remitted to the account are appropriated and immediately available for expenditure in the same manner as other money in the account.

2 MCAR S 1.5327 Status of property upon expiration of lease. Expiration or termination of a lease returns the property to the ownership status it had when it was declared temporarily unneeded.

Repealer. Rule 2 MCAR S 1.5301 is repealed.

AR0169
4/21/82

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Administration
Real Estate Management Division
Rule Numbers: 2 MCAR SS 1.5302 to 1.5327

Rule Title: Adopted Rules Governing Leasing of State Property

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference: None except those permitted by statute.

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: Roger J. Helder, Jr.

Title: Assistant Revisor

Phone: 297-2948

(9)

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE OF MINNESOTA GOVERNING LEASING OF STATE-OWNED PROPERTY (2 MCAR § 1.5302 THROUGH 1.5327)

ORDER ADOPTING RULES

Notice of the Commissioner of Administration's intent to adopt the above-entitled rules without a public hearing was published in the State Register on March 8, 1982, and was sent by United States Mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, Section 15.0412, Subdivision 4 on February 25, 1982. After affording interested and affected persons an opportunity to submit comments for thirty (30) days after Notice, receiving fewer than seven (7) written requests for a public hearing within the thirty (30) day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules;

NOW, THEREFORE, IT IS ORDERED that these rules identified as 2 MCAR § 1.5302 through 1.5327 are adopted this 19th day of April, 1982, pursuant to authority vested in me by Minnesota Statutes, Section 16.02, Subdivision 14.

James J. Hiniker, Jr.
Commissioner of Administration

STATE OF MINNESOTA

DEPARTMENT of Administration

Office Memorandum

(12)

TO : Ms. Andrea White
Assistant Revisor of Statutes
State Office Building

DATE:
April 19, 1982

FROM : James J. Hiniker, Jr.
Commissioner

PHONE:
296-3862

SUBJECT: Proposed Adoption of Rules
2 MCAR § S 1.5302 through 1.5327

The NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING and the rules as proposed were published in the State Register on March 8, 1982.

Three communications were received during the 30 day comment period. Two were by telephone, one was a memorandum from a state employee. All three communications were requests for copies of the rules and associated information. Not any of the comments requested a public hearing or a charge in the rules as published.

The proposed rules and an order adopting the rules have this date been forwarded to the Attorney General for review. As you know, the Attorney General will delay final review until the Revisor of Statutes has reviewed and approved the rules as to form. To that end this memo is written.

I respectfully ask that you review the proposed rules (copy attached) at your earliest opportunity and that you report your findings to Ted Martinez, Special Assistant Attorney General, Room 204 Administration Building. I will appreciate your sending a copy of that report to Howard W. Eicher of the Real Estate Management Division, Room G-22 Administration Building.

If you have questions or need more information when reviewing the rules, please call Howard at 296-1897.

JJH/pk

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing Leasing of State Property

Order for Notice of Intent to Adopt Rules Without Public Hearing

It is ordered this 22ND day of February, 1982, that a Notice of Intent to Adopt Rules without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State of Minnesota for that purpose and be published in the State Register.

State of Minnesota

James Hiniker

Commissioner of Administration

(3)

Department of Administration
Real Estate Management Division

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing Leasing of State Property.

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the State of Minnesota proposes to adopt the above entitled rules without a public hearing. The Commissioner of Administration has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Section 15.0412, Subdivision 4h (1980). 2

Persons interested in these rules shall have thirty (30) days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. 3 4

Unless seven (7) or more persons submit written requests for a public hearing on the proposed rules within the thirty day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, Section 15.0412, Subdivisions 4-4f. 5 7

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Howard W. Eicher
Real Estate Management Division
Room G-22 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155
telephone: (612) 296-1897 6

Authority for the adoption of these rules is contained in Minnesota Statutes, Section 16.02, Subdivision 14. Additionally a Statement of Need and Realsonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Real Estate Management Division of the Department of Administration upon request. 9

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Howard W. Eicher, at the above address. 8

A copy of the proposed rules is attached to this Notice. Copies of this Notice and the proposed rules are available and may be obtained by contacting Howard W. Eicher at the above address.

State of Minnesota

Commissioner of Administration
2-22-82

(4)

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing Leasing of State Property

Affidavit of Mailing

State of Minnesota)
) ss
County of Ramsey)

Patricia Meinke, being first duly sworn, deposes and says:

That on the 25th day of February 1982, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State of Minnesota for the purpose of receiving notice of the proposed adoption of rules by this State of Minnesota.

Further affiant sayeth not.

Patricia Meinke

Subscribed and sworn to before me
this 25th day of FEB. 1982.

Howard W. Eichner

HOWARD W. EICHNER
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Nov. 3, 1986

Department of Administration
Real Estate Management Division

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing Leasing of State Property.

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the State of Minnesota proposes to adopt the above entitled rules without a public hearing. The Commissioner of Administration has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Section 15.0412, Subdivision 4h (1980).

Persons interested in these rules shall have thirty (30) days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven (7) or more persons submit written requests for a public hearing on the proposed rules within the thirty day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, Section 15.0412, Subdivisions 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Howard W. Eicher
Real Estate Management Division
Room G-22 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155
telephone: (612) 296-1897

Authority for the adoption of these rules is contained in Minnesota Statutes, Section 16.02, Subdivision 14. Additionally a Statement of Need and Realsonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Real Estate Management Division of the Department of Administration upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Howard W. Eicher, at the above address.

A copy of the proposed rules is attached to this Notice. Copies of this Notice and the proposed rules are available and may be obtained by contacting Howard W. Eicher at the above address.

State of Minnesota

Commissioner of Administration

(6)

AFFIDAVIT

IN THE MATTER OF THE PROPOSED ADOPTION OF
RULES OF THE STATE OF MINNESOTA GOVERNING
LEASING OF STATE-OWNED PROPERTY
(2 MCAR § 1.5302 THROUGH 1.5327

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Affiant, Howard W. Eicher, being first duly sworn, deposes and says:

That on February 25, 1982, under his supervision in the Real Estate Management Division of the Minnesota State Department of Administration, a NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING was served by United States Mail on all persons and associations who requested notice of the proposed adoption of rules by the State of Minnesota; and,

That the said notice invited the noticees to submit comments or requests for a public hearing to the affiant within a period of thirty (30) days; and,

That on March 8, 1982, the proposed rules and the NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING were published in the State Register; and,

That in the thirty (30) day period immediately following publication, affiant received one written communication. A copy of the communication is attached. A note thereon indicates action taken by affiant.

Further affiant sayeth not

Howard W. Eicher

Subscribed and sworn before me on this
19th day of April, 1982

Beverly H. Kross

BEVERLY H. KROSS
NOTARY PUBLIC—MINNESOTA

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT WILLMAR STATE HOSPITAL

Office Memorandum

TO : Howard W. Eicher
Real Estate Management Division
Department of Administration

DATE: March 19, 1982

FROM : Gregory G. Spartz
Assistant Administrator GGS/ne

PHONE: 106 - 204

SUBJECT: PROPOSED RULES GOVERNING LEASING OF STATE PROPERTY

As Assistant Administrator of Willmar State Hospital, I have an interest in the proposed rules governing Leasing of State Property. Therefore, I would appreciate receiving a copy of these rules as your earliest convenience.

Thank you for your prompt attention to this request.

GGS:ne

Copy of proposed rules mailed to Gregory G. Spartz 3-23-82 HWE

RECEIVED

MAR 23 1982

REAL ESTATE MANAGEMENT

(7)

AFFIDAVIT

IN THE MATTER OF THE PROPOSED ADOPTION OF
RULES OF THE STATE OF MINNESOTA GOVERNING
LEASING OF STATE-OWNED PROPERTY
(2 MCAR § 1.5302 THROUGH 1.5327)

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Affiant, Howard W. Eicher, being first duly sworn, deposes and says:

That on February 25, 1982, under his supervision in the Real Estate Management Division of the Minnesota State Department of Administration, a NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING was served by United States Mail on all persons and associations who requested notice of the proposed adoption of rules by the State of Minnesota; and,

That the said notice invited the noticees to submit comments or requests for a public hearing to the affiant within a period of thirty (30) days; and

That on March 8, 1982, the proposed rules and the NOTICE were published in the State Register; and,

That in the thirty (30) day period immediately following publication, affiant received the following listed telephone communcations concerning the rules, and took the following listed actions in response to the telephone communications:

On March 8, 1982, Tom Triplett of "The Minnesota Project" called and requested information as to what changes the proposed rules will make. Affiant offered to mail a copy of the present rule (2 MCAR § 1.5301) so that Mr. Triplett can make a comparison. Affiant also offered to mail a copy of Statement of Need and Reasonableness. Mr. Triplett graciously accepted. Present rule and Statement of Need and Reasonableness were mailed by Pat Meinke on March 8, 1982, to Tom Triplett, % the Minnesota Project, 618 East 22nd Street, Minneapolis, Minnesota 55404;

On March 22, 1982, Loni Kemp of "The Minnesota Project" called and requested a copy of the proposed rules. She stated she would call again if she has questions after reading the proposed rules. Copy of proposed rules mailed by Pat Meinke on March 22, 1982, to Loni Kemp, % The Minnesota Project, Box 4, Preston Minnesota 55965;

Further affiant sayeth not.

Howard W. Eicher

Subscribed and sworn before me
on this 19th day of April, 1982

Bernadette Kraus

(5)

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption
of Rules of the State of Minnesota
Governing Leasing of State Property

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, Section 15.0412, Subdivision 4, that their names be placed on file with and maintained by the State of Minnesota for the purpose of receiving notice of the proposed adoption of rules by the Department of Administration of the State of Minnesota is accurate and complete as of 1:00 P.M., this 25th day of February, 1982.

Colleen T. Kisch

Colleen T. Kisch
Office Services Supervisor II

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 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Administration
Board of Electricity

Proposed Amendment of Rules Governing Inspection Fees and Handling Fee for Request for Inspection Form

Addition to Notice of Intent to Adopt Rules without a Public Hearing

The Notice of Intent to Adopt Rules without a Public Hearing and the above referenced matter published at *State Register*, Volume 6, Number 33, pp. 1414-1417, February 15, 1982 (6 S.R. 1414) omitted the following statement:

Persons who wish to be advised of the submission of this material to the Attorney General should contact:

John Quinn
Executive Secretary
State Board of Electricity
Room N-191, Griggs Midway Building
1821 University Avenue
Saint Paul, Minnesota 55104
Telephone: (612) 297-2111

Department of Administration
Real Estate Management Division

Proposed Rules Governing Leasing of State Property

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State of Minnesota proposes to adopt the above entitled rules without a public hearing. The Commissioner of Administration has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subd. 4h (1980).

Persons interested in these rules shall have thirty (30) days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven (7) or more persons submit written requests for a public hearing on the proposed rules within the thirty day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subds. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Howard W. Eicher
Real Estate Management Division
Room G-22 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155
Telephone: (612) 296-1897

Authority for the adoption of these rules is contained in Minnesota Statutes § 16.02, subd. 14. Additionally a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Real Estate Management Division of the Department of Administration upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Howard W. Eicher, at the above address.

A copy of the proposed rules is attached to this notice. Copies of this notice and the proposed rules are available and may be obtained by contacting Howard W. Eicher at the above address.

James J. Hiniker, Jr.
Commissioner of Administration

Rules as Proposed (all new material)

2 MCAR § 1.5302 Authority. Rules 2 MCAR §§ 1.5302-1.5327 are authorized by Minn. Stat. § 16.02, subd. 14.

2 MCAR § 1.5303 Purpose. Rules 2 MCAR §§ 1.5302-1.5327 are promulgated to govern the leasing of state-owned real property which is temporarily not needed for public use and the leasing of which is not otherwise provided for or prohibited by law.

2 MCAR § 1.5304 Definitions.

A. Applicability. For the purposes of 2 MCAR §§ 1.5302-1.5327, the following terms have the meanings given them.

B. Commissioner. "Commissioner" means the Commissioner of the Department of Administration.

C. Department. "Department" means the Department of Administration.

D. Real estate management division. "Real estate management division" means the Real Estate Management Division of the Department of Administration.

2 MCAR § 1.5305 Commissioner's duties. The commissioner shall establish and enforce the conditions in a lease entered into under 2 MCAR §§ 1.5302-1.5327.

2 MCAR § 1.5306 Responsibility for leasing. The commissioner shall determine whether a state-owned property will be leased. The commissioner shall make the determination after a comprehensive evaluation of the circumstances surrounding the proposed lease.

2 MCAR § 1.5307 The property may be leased only if the evaluation referred to in 2 MCAR § 1.5306 discloses the following:

A. That the property is available for lease;

B. That the applicant for the lease is willing and able to pay rent which, at a minimum, equals the state's direct and indirect costs in providing the property being leased;

C. That the proposed use of the property by the applicant for the lease is compatible with existing or contemplated state operations and programs that might be affected by the lease;

D. That the proposed use of the property by the applicant for the lease is in compliance with all state and local ordinances and codes;

E. That the applicant is duly licensed to use the property as proposed in the application for the lease; and

F. That the proposed use of the property by the applicant for the lease will not adversely affect the neighborhood or community in which the property is located.

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.

The compatibility required by C. shall be established by the heads of the agencies operating the affected existing or contemplated state programs. The commissioner shall not lease state property without a written statement from affected agency heads that the proposed use of the property by the lessee is not incompatible with existing or contemplated state operations and programs.

2 MCAR § 1.5308. Effect of lease on community; final jurisdiction. The commissioner has final jurisdiction in establishing whether the effect of the lease of the state-owned property on the neighborhood or community in which the property is located is adverse to the extent that the property should not be leased.

2 MCAR § 1.5309 Adverse effect of lease; public hearing. Notwithstanding 2 MCAR [1.5308, when the commissioner has information that a serious adverse effect on the neighborhood or community may be created by the leasing of the property, or when the commissioner has information that the leasing of the property is objectionable to a substantial number of citizens in the neighborhood or community, the commissioner may direct that a public hearing be convened.

2 MCAR § 1.5310 Public hearing procedure.

A. Informal process; opportunity for hearing. The hearing referred to in 2 MCAR § 1.5309 shall be informal. It shall provide an opportunity to all interested persons to publicly object to or support, orally or in writing, the lease being considered.

B. Advertisement. The hearing must be advertised in a newspaper having general circulation in the area in which the property is located. The advertisement must appear at least one week before the date of the hearing. In addition to announcing the time and the place of the hearing and the subject to be discussed, the advertisement shall invite written testimony by all persons unable or unwilling to appear.

C. Written testimony. Persons wishing to testify in writing as authorized in A. will be invited to do so by writing to: Commissioner of Administration, State of Minnesota, 50 Sherburne Avenue, St. Paul, Minnesota 55155.

D. Findings of fact; decision. Within ten working days following the hearing the commissioner shall make findings of fact based on testimony at the hearing and shall decide to lease or not to lease the property.

E. Published notice of decision. The commissioner shall, by publication in the *State Register* and by conspicuous posting in the real estate management division, give notice of the decision and the reasons for the decision.

F. Mailed notice of decision. Each party who has expressed an interest in leasing the property shall be notified by mail of the commissioner's decision and the reasons for the decision.

2 MCAR § 1.5311 Drafting of lease. The real estate management division shall draft all real property leases. Each lease shall be in accord with its policy and procedures and shall be in a form approved by the attorney general.

2 MCAR § 1.5312 Advertising expenses and other pre-lease costs. Advertising expenses and other pre-lease costs incurred by the real estate management division in leasing the property shall be borne by the agency which had custodial control of the property when it was declared temporarily unneeded.

2 MCAR § 1.5313 Notice to interested parties.

A. Request for notice. All parties wishing to be notified of the availability for lease of temporarily unneeded state property may request notification by written request sent to: Director of the Real Estate Management Division, G-22 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155.

B. List of requesters. A list of parties who request notification or whose interest in leasing such property is otherwise known to the real estate management division shall be maintained by the real estate management division. The list shall indicate the particular areas in which the interested party has expressed an interest.

C. Retention of names on list. Each interested party's name shall remain on the list for one year. Then the name shall be removed unless a new expression of interest is made known to the real estate management division.

D. Mailing of notice. The notice that a property is available for lease shall be mailed to all appropriate parties on the list when state-owned property becomes available for lease. The notice shall be mailed at least 15 calendar days before the bid return deadline.

2 MCAR § 1.5314 Advertisement of property in *State Register*. In addition to mailing of the notice described in 2 MCAR § 1.5313 D., the real estate management division shall, except as provided in 2 MCAR § 1.5315, advertise the property for lease in the *State Register*.

2 MCAR § 1.5315 Advertisement of property in newspaper.

A. Requirement. When the commissioner has information that more than two parties are interested in leasing the property, he shall advertise the property for lease in a newspaper having general circulation in the area in which the property is located.

B. Time. The newspaper advertisement shall appear on the same day of the week for two successive weeks. The final advertisement shall appear at least seven days before opening of bids.

2 MCAR § 1.5316 Notice that property will not be leased. If a decision is made not to lease property for which application to lease has been received, public notice of the decision and reasons for the decision shall be published in the *State Register* and posted in the real estate management division.

2 MCAR § 1.5317 Posting of notification that property has been leased. When a property has been leased, notification shall be posted conspicuously in the real estate management division for a period of 30 days from the date of execution of the lease.

2 MCAR § 1.5318 Awarding of lease.

A. Open competition. Except as provided in 2 MCAR §§ 1.5319-1.5320, the lessee shall be selected on the basis of free and open competition.

B. Award standards. The property shall be leased to the highest responsible bidder, consistent with the state's intended use and management of the property, if the bid fulfills the minimum rent required in 2 MCAR § 1.5307 B.

C. Rejection and waiver. The department expressly reserves the right to reject any or all bids or to waive informalities in them.

2 MCAR § 1.5319 Waiver of competitive bidding process. Open competitive bidding for leasing state-owned property may be waived when the commissioner determines that one or more of the following circumstances exist:

A. There is only one interested party that can feasibly use the property;

B. The contemplated rental term is 90 days or less;

C. The party wishing to lease the property is a not-for-profit organization, and the proposed lessee's occupancy is clearly a public benefit as determined by the commissioner; or

D. Factors other than bid price, such as maintenance of the property, are paramount.

2 MCAR § 1.5320 Order of priority in awarding leases. Except to the extent that the state reserves the right to advertise unneeded property to protect the integrity of the competitive bidding process, the state shall refrain from engaging in the real estate market. Unused state real estate shall be made available to entities in the following order of priority:

A. State departments and agencies;

B. University of Minnesota;

C. Other governmental subdivisions;

D. Public or not-for-profit organizations with particular priority given to those organizations which operate to provide a social or community service;

E. Private enterprises established for profit, with particular priority given to those organizations which operate to provide a social or community service.

2 MCAR § 1.5321 Protection of state's interests; legal claims. The lessee shall, in every instance, be required to indemnify and hold the state harmless for any claim, meritorious or otherwise, and for any causes of action, regardless of their nature, arising directly or indirectly out of lessee's use or occupancy of the property. The state shall not be liable for any damage to property of the lessee or injury to lessee or the lessee's invitees.

2 MCAR § 1.5322 Liability insurance to be purchased by lessee.

A. Requirement and amount. If in the judgment of the commissioner the proposed use or occupancy of the property by the applicant for the lease will seriously jeopardize life or property, the lessee shall be required to purchase liability insurance which protects all persons and their property from injury or damage. The amount of liability insurance shall not be less than: $100,000 minimum coverage per person per occurrence; $500,000 minimum coverage per occurrence; and $100,000 minimum additional coverage for damages to or loss of property per occurrence.

B. Contents; copies. The insurance policy shall name the state of Minnesota as an additional insured. A copy of either the policy or a certificate of insurance shall be furnished to the state before occupancy by the lessee. The policy shall include an

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endorsement providing for not less than 15 days prior written notice to the state in the event of material change or cancellation of the insurance.

C. State as sole insured. If in the judgment of the commissioner the proposed use or occupancy of the property by the applicant for the lease will place life or property in severe jeopardy, the commissioner may require that the liability policy required in A. and B. be a policy in which the state of Minnesota is named as the sole insured.

2 MCAR § 1.5323 Improvements to become property of the state. All improvements to the property made by a lessee shall become the property of the state except as expressly agreed upon in the lease.

2 MCAR § 1.5324 Cost of remodeling, upgrading, or landscaping property. The cost of remodeling, upgrading, or landscaping the property to prepare or maintain it for lessee's use, or the cost of remodeling or retrofitting to bring a property into compliance with the state building code or any local code shall be borne solely by the lessee.

2 MCAR § 1.5325 Material change in premises; prior approval required. Remodeling, upgrading, landscaping, retrofitting, or any other action which will materially change the premises shall not be commenced by the lessee without prior approval of the commissioner.

2 MCAR § 1.5326 Disposition of funds; where deposited. Except as otherwise provided by law, money received by the commissioner from the leasing of unneeded state property shall be credited to the general fund of the state. However, a portion of the proceeds from the lease equal in amount to the advertising expenses and other pre-lease costs referred to in 2 MCAR § 1.5312 may be remitted to the account from which the expenses and costs were paid. Funds so remitted to the account are appropriated and immediately available for expenditure in the same manner as other money in the account.

2 MCAR § 1.5327 Status of property upon expiration of lease. Expiration or termination of a lease returns the property to the ownership status it had when it was declared temporarily unneeded.

Repealer. Rule 2 MCAR § 1.5301 is repealed.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Agriculture
Shade Tree Program

Adopted Amendments to Rules Governing the Shade Tree Program

The rules proposed and published at *State Register*, Volume 6, Number 24, pages 1111-1113, December 14, 1981 (6 S.R. 1111) are now adopted as proposed.

Small Business Finance Agency

Adopted Amendment Regarding the Making of Business Loans

The rule proposed and published at *State Register*, Volume 6, Number 21, pages 1016-1018, November 23, 1981 (6 S.R. 1016) is now adopted with the following modification:

(8)

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Adoption of New Rules and Repeal of an Existing Rule of the Real Estate Management Division Governing the Leasing Out of State-owned Property Temporarily Not Needed by the State.

Statement of Need and Reasonableness

This is a proposed adoption of new rules and the repeal of existing Rule 2 MCAR § 1.5301 governing leasing out of temporarily unneeded state-owned property.

The need to repeal Rule 2 MCAR § 1.5301 and replace it through the adoption of proposed Rules 2 MCAR § 1.5302 through 1.5327 arises from the state's experience in leasing out property in recent years. The intended effect of the new rules is to more fully define the department's actions in those situations wherein the state is requested to lease out property not being used by the state. The rule being repealed as well as the proposed new rules are promulgated pursuant to Minnesota Statutes 16.02, Subdivision 14.

Rule 2 MCAR § 1.5302

This proposed rule cites the authority by which the new rules, if adopted, will be promulgated. The rule is needed to identify the source of the authority for the rules being proposed for adoption.

Rule 2 MCAR § 1.5303

This proposed rule is needed to fully identify the scope and purpose of the proposed rules which follow. The rule reasonably defines the need for the new rules, and excepts the applicability of the proposed new rules from the leasing of such properties as are otherwise provided for by law.

Rule 2 MCAR § 1.5304

This proposed rule is needed to define the terms used in the rules which follow.

Rule 2 MCAR § 1.5305

This proposed rule is needed to fully define the powers and duties of the commissioner of administration. The new rule reasonably eliminates the likelihood of conflict and confusion as to who has authority and responsibility for establishment and enforcement of conditions in a lease of state-owned property.

Rule 2 MCAR § 1.5306

This proposed rule is needed to identify the person who will have authority and responsibility for determining whether a state-owned property will be leased. The rule is reasonable in that it requires the commissioner to base the determination on the findings of a comprehensive evaluation of the circumstances surrounding the proposed lease.

Rule 2 MCAR § 1.5307

The proposed rule is needed to definitively identify the conditions which must exist if a state-owned property is to be leased. The rule is reasonable in that it sets forth six (6) broad conditions which must be answerable in the affirmative before property can be considered for leasing. Each of the six conditions is necessary to protect the state's interest and that of the local community. The rule reasonably involves affected state agencies in the decision-making process.

Rule 2 MCAR § 1.5308

This proposed rule is needed to eliminate a question as to who has responsibility and authority to decide whether a proposed lease has an adverse effect on the community. The rule is reasonable and consistent in that it places the responsibility and authority in the commissioner as is obviously intended in Minnesota Statutes, Section 16.02, Subdivision 14. The rule is made more reasonable by Rules 2 MCAR § 1.5309 and 2 MCAR § 1.5310 which follow.

Rule 2 MCAR § 1.5309

This proposed rule is needed to provide the commissioner with an opportunity to learn more of the effects a proposed lease may have on the neighborhood or community. The rule reasonably recognizes that public input is essential where the effects of a lease on the neighborhood are concerned, and that a public forum (hearing) is needed to assist the commissioner in making a reasonable determination.

Rule 2 MCAR § 1.5310

This proposed rule is needed to set forth the procedure to be used when the commissioner directs that a public hearing be convened as provided in 2 MCAR § 1.5309. The rule consists of paragraphs A through F.

Paragraph A reasonably provides that the hearing shall be informal, and shall allow written as well as oral testimony for or against the lease.

Paragraph B reasonably requires that the hearing be advertised. It defines when the advertisement must appear, and includes a requirement that the advertisement must make public the subject to be discussed at the hearing; and that written testimony may be made by persons unable or unwilling to appear.

Paragraph C informs the persons who wish to testify in writing where to mail such testimony.

Paragraph D requires that the commissioner make findings of fact and reach a decision to lease or not to lease the property within ten (10) working days following the hearing. The time allowed is reasonable in that it is sufficient to allow deliberation, and is short enought to avoid undue delay.

Paragraph E requires that the decision reached by the commissioner, and the reasons for the decision, be published in the State Register, and that it be posted conspicuously in the real estate management division. This is reasonable and consistent with openness in government.

Paragraph F expands on the requirement of Paragraph E in that it requires that each party who has actually expressed a bona fide interest in leasing the property be informed by separate letter of the commissioner's decision and the reasons for the decision. The requirement is reasonable and, again, consistent with the public's right to be apprised of decisions in government.

Rule 2 MCAR S 1.5311

This proposed rule places the responsibility for drafting of leases in the real estate management division. The rule is reasonable in that it makes a requirement of that which is past practice; further, it involves the expertise of the attorney general.

Rule 2 MCAR § 1.5312

This proposed rule requires defrayment of advertising and other pre-lease costs by the agency which declared the property unneeded. The rule is needed to obviate the misunderstandings and conflicts which may arise in connection with which agency's budget must underwrite those costs. The rule very reasonably places the responsibility for payment of those costs in the agency which, by law, continues to have custodial control of the property.

Rule 2 MCAR § 1.5313

This proposed rule contains four (4) sections (A through D), and deals with notice by the state to parties interested in leasing of state-owned properties.

Paragraph A invites parties interested in leasing state-owned properties to make such interest known to the director of real estate management division. It is needed and is reasonable and consistent with the public's right to free and equal access to public properties.

Paragraph B requires the real estate management division to maintain a list of parties having expressed an interest in leasing state-owned properties. It is needed to provide guidelines as to how and where the public's request for information will be maintained.

Paragraph C enlarges on the requirement in Paragraph B. It reasonably places a limit on the length of time a party's name will remain on the list.

Paragraph D requires that a notice be mailed to each interested party when state-owned property is available for leasing. Further, it requires that the notice be mailed at least fifteen (15) calendar days before bidding closes. The rule is needed to insure that interested parties are informed and may have sufficient lead time to deliberate the lease.

Rule 2 MCAR § 1.5314

This proposed rule requires that state-owned property available for lease must, with exceptions as provided in Rule 2 MCAR § 1.5315, be advertised for lease in the State Register. It is needed to insure that the interested public is given fair opportunity to avail itself of the use of state-owned property. The rule is reasonable in that it requires advertisement of the availability of property, but makes reasonable exceptions where such advertisement is clearly not in the best interest of the state or the public.

Rule 2 MCAR § 1.5315

This proposed rule requires that where the commissioner has reason to believe that more than two parties may be interested in leasing the property, he shall advertise the availability of the property in a newspaper in the vicinity of the property. The rule is reasonable in that it provides an exception for those cases wherein there is little interest in leasing of the property; and it is reasonable in that it insures that the property must be advertised for two successive weeks, and that bids may not be opened until at least a week after the last advertisement, thus insuring at least a three week deliberation period for the bidding public.

Rule 2 MCAR § 1.5316

This proposed rule requires that when a decision is made by the commissioner not to lease property, public notice of the decision and the reasons for the decision will be published in the State Register; and the notice will be conspicuously posted in the real estate management division. The rule has the obvious purpose of fulfilling the public's right to know.

Rule 2 MCAR § 1.5317

This rule requires that when a lease of state property has been finalized, a notice of the details will be posted conspicuously in the real estate management division. The rule is needed to insure openness in government.

Rule 2 MCAR § 1.5318

This rule sets forth the state's policy in awarding of leases. With notable exceptions, the rule requires that leases be awarded to highest responsible bidders. It is reasonable in that Section A, B, and C detail the state's policy, but do make provision for those instances where exceptions are necessary to safeguard the state's best interests.

Rule 2 MCAR § 1.5319

This rule is needed to establish guidelines as to when the competitive bidding process will not be used. Sections A, B, C, and D state those instances. The rule is reasonable in that it makes exceptions only where it is necessary in the interest of sound property management.

Rule 2 MCAR § 1.5320

This proposed rule sets forth the order in which unneeded state properties will be made available to entities. It is needed to avoid the likelihood of dispute as to what entity enjoys priority in the use of state property. The rule is reasonable in that it sets forth in logical order the priority which the various entities will have. The rule recognizes and gives priority to entities that perform a public service.

Rule 2 MCAR § 1.5321

This proposed rule recognizes the need for protecting the state's interest when property is leased. The rule states clearly and unmistakably that the state's interests must be held inviolate by the lessee. The rule is reasonable in that it makes clear to prospective lessees that the state will not be liable for perils of any kind.

2 MCAR § 1.5322

This proposed rule is a logical extension of 2 MCAR § 1.5321. Section A reserves to the commissioner the right to require a lessee to purchase liability insurance (naming the state as an additional insured) in the amount needed to protect the state against tort claims in those instances where the commissioner adjudges that the lessee's proposed use or occupancy of the property will seriously jeopardize life or property. The rule is needed to allow greater flexibility to the commissioner in protecting the state's interests. The rule is reasonable in that the absence of such a rule will clearly place the state in the unenviable position of having to purchase insurance or to self-insure. Section B of the rule reasonably requires that the lessee must provide evidence that such insurance has been purchased before taking possession of the property under the lease. Section C of the rule adds another dimension to the need for insurance in that it reasonably allows the commissioner to require a separate policy which names the state as the sole insured in instances where, in the judgement of the commissioner, the lessee's proposed use or occupancy of the property will place life or property in severe jeopardy. It differs from Section A only in that Section A requires a joint policy naming the state as an additional insured, while Section C requires a separate policy naming the state as sole insured.

Rule 2 MCAR § 1.5323

This proposed rule provides that all improvements made to the property by the lessee will become the property of the state. The rule is needed to avoid the possibility of misunderstandings concerning ownership of improvements. The rule is reasonable in that its provisions are standard in the industry; and in that it allows for exceptions as agreed upon in the lease.

Rule 2 MCAR § 1.5324

This proposed rule is needed to insure that the state will not be placed in a position of having to expend funds to render its property usable for a lease. The rule is reasonable in that it allows prospective lessees to understand the state's firm policy concerning costs of remodeling, upgrading, landscaping, retrofitting, etc.

Rule 2 MCAR § 1.5325

This proposed rule is needed in recognition of the likelihood that the proposed lessee will wish to make material changes in the premises. The rule makes clear that such changes must have prior approval of the commissioner. The rule is reasonable in that it is, and has been, a standard requirement in leases.

Rule 2 MCAR § 1.5326

This proposed rule is needed to eliminate questions as to disposition of receipts from the lessee. The rule is reasonable in that it requires that receipts be deposited to the general revenue fund except where existing law directs otherwise. The rule makes another very important exception, i.e., the advertising expenses and other pre-lease costs paid (as required in 2 MCAR § 1.5312) by the agency having had custodial control may be returned to the account from which they were paid.

Repealer

The repealer is needed to eliminate the existing rule in favor of Rules 2 MCAR § 1.5302 through 1.5327.

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE OF MINNESOTA GOVERNING LEASING OF STATE-OWNED PROPERTY

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, TED MARTINEZ, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Rules Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Ted A. Martinez

SPECIAL ASSISTANT ATTORNEY GENERAL

4-22-82

DATE

(11)

IN THE MATTER OF THE ADOPTION OF RULES OF THE STATE OF MINNESOTA GOVERNING LEASING OF STATE-OWNED PROPERTY (2 MCAR § 1.5302 THROUGH 1.5327)

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Patricia Kinney, being first duly sworn, deposes and says:

That on the 19th day of April 1982, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached NOTICE OF SUBMISSION to the Attorney General by depositing in the State of Minnesota Central Mail system for United States mailing at said City of St. Paul a copy thereof, property envenoped, with postage prepaid, on all persons and associations who requested notice that the rules in the above entitled matter have been submitted to the Attorney General

Patricia Kinney
PATRICIA KINNEY

Subscribed ans sworn to before me
this 19th day of April 1982.

Beverly H. Kroiss
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOV. 1, 1984

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION
OF RULES OF THE STATE OF MINNESOTA
GOVERNING LEASING OF STATE-OWNED PROPERTY
(RULES 2 MCAR 1.5302 THROUGH 1.5327)

NOTICE OF SUBMISSION
TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, Section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, April 19, 1982, for review as to form and legality. Pursuant to 1 MCAR § 1.206 B., the Attorney General will not approve the rules for at least 8 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, Room 204 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rules of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after March 8, 1982, the date on which the proposed rules were published in the State Register and before submission to the Attorney General, you may contact Howard W. Eicher, Assistant Director of Real Estate Management, Room G-22 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, telephone (612) 296-1897.

James [illegible]

COMMISSIONER OF ADMINISTRATION

April 19, 1982

DATE